MEMORANDUM

TO: Craig Futterman
FROM: Hannah George
RE: State of the Law in the 7th Circuit re: *Heck v. Humphrey* and Excessive Force Claims
DATE: July 25, 2022

QUESTION PRESENTED

The Cook County Public Defender's office has approached us for help bringing a civil rights suit on behalf of [REDACTED] against the Chicago Police Department. While the statute of limitations would have usually run out in Illinois for his claims of excessive force by now, *Heck v. Humphrey* bars plaintiffs from recovering damages in a § 1983 lawsuit if prevailing in that suit would necessarily imply that an underlying state court conviction or sentence was invalid. *Heck v. Humphrey,* 512 U.S. 477 (1994). If applicable to Mr. [REDACTED]'s case, he may have a path to recovery if he the court overturns his conviction. You asked me to write a memorandum about the state of *Heck* doctrine in the 7th Circuit vis-à-vis 4th Amendment claims of excessive force. Under *Heck,* do Mr. [REDACTED]'s § 1983 claims against all the officers involved in his arrest necessarily undermine his aggravated battery conviction against Officer [REDACTED]?

BRIEF ANSWER

It is unlikely that the court will conclude that Mr. [REDACTED]'s excessive force claims necessarily invalidate his conviction and that they are therefore *Heck*-barred. The court has established that excessive force claims do not necessarily invalidate certain claims, such as resisting a police officer or other uncontested reasons for arrest. However, the court has also agreed that if a litigant's account of the facts could theoretically be compatible with an underlying condition, that claim is still barred by *Heck* if specific allegations are inconsistent with the validity of the conviction. Because of this, it is possible that Mr. [REDACTED]'s claims—that the police framed him for battery to cover up their own uses of excessive force—may be enough for the court to agree that

they are *Heck*-barred until his conviction is overturned. However, if he does not contest even one count of obstructing a peace officer (as it pertains to his removal from his car), then the court is likely to find that it is both possible for Mr. [REDACTED] to have resisted arrest and for the officers to have used excessive force against him in trying to gain compliance. If this is true and the court finds that the officers were justified in using *some* amount of force, then it is unlikely that it will also find Mr. [REDACTED]'s excessive force claims to be *Heck*-barred.

FACTS

On November X, 20XX, Mr. [REDACTED] fled by vehicle during an attempted traffic stop, and was curbed shortly thereafter by members of the Chicago Police Department. *See* ROP, R 150. Two officers forcibly took Mr. [REDACTED] from his vehicle, and a struggle ensued. Allegedly, Mr. [REDACTED] kicked and moved around after he was put face-down on the ground and struck Officer [REDACTED] in the knee with his foot while struggling. *See id.* He was arrested for aggravated battery and resisting or obstructing a peace officer. *See* CLR, C 77.

Mr. [REDACTED] waived his right to testify during his criminal trial. *See* SUP R 148. Because of this, his account of what happened during the encounter with the officers is not on the record. What is on record is what his attorney claims is the story, as detailed above. Mr. [REDACTED]'s attorney pointed out that Mr. [REDACTED] had been Tased after more officers became involved in the struggle. ROP 93. Rather than claim any more specific wrongdoing by the officers during this arrest, Mr. [REDACTED]'s attorney claimed that "it was handled, by both sides, not the way it should have been handled." *Id.* at 93-94. He made no direct claim that the officers used excessive force. Mr. [REDACTED] was found guilty on two counts of aggravated battery of a peace officer (against [REDACTED]) and two counts of resisting or obstructing a peace officer (after he was pulled from his car). *See id.* at C 116. His guilty charges were for aggravated battery against Officer [REDACTED]; Mr. [REDACTED] was found not guilty for aggravated battery

against Officer [REDACTED]. *See* ROP at R 142. On June X, 20XX, he was sentenced to serve XXX years of mandatory supervised release after receiving credit for his XXX days served in custody. *See* CLR at C 129.

On June X, 20XX, Mr. [REDACTED] filed a motion for a new trial contesting, especially, the finding of guilty on the two counts of aggravated battery. *See* ROP at R 149. That motion was denied. *See id.* at R 155. On June X, 20XX, Mr. [REDACTED] filed a notice of appeal for his conviction. *See* CLR at C 135. That appeal was dismissed.

Over the phone, Mr. [REDACTED] claims that his arrest was made primarily to cover up the abuses of the police officers against him. His argument against the aggravated battery charges is that he was not the one to commit battery against the officers, but that the officers were the ones to commit battery against him, and they framed him to cover their actions up. He filed a Motion to Reconsider order on XXXX to contest the State's motion to dismiss of his Amended Post Conviction Petition. This was done so that he may retain an attorney who can amend his Petition with an additional claim of pattern and practice of illegal arrests and abuse by Officer [REDACTED]. Mr. [REDACTED] also alleges ineffective assistance of counsel, actual innocence, and wrongful arrest. On the former point, Mr. [REDACTED] alleges that his trial attorney never questioned the probable cause for the arrest, nor did the attorney investigate an eyewitness he knew was present at the scene.

If Mr. [REDACTED]'s Motion to Reconsider is successful, he would like us to explore options for pursuing a § 1983 suit in the event that his conviction is also successfully overturned.

ANALYSIS

Under *Heck v. Humphrey*, 512 U.S. 477 (1994), if a judgment in favor of the plaintiff would "necessarily imply the invalidity of his conviction or sentence… the [§ 1983] complaint must be dismissed unless the plaintiff can demonstrate the conviction or sentence has already been

invalidated." *Id.* at 487. However, if the plaintiff's claim does *not* demonstrate the invalidity of the criminal judgment against them, the action may proceed. *See id.* Because of this, "a § 1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Id.* at 489–90.

I. In the Seventh Circuit, a Fourth Amendment claim of use of excessive force can coexist with a valid conviction for resisting arrest; they accrue immediately.

It is well-established in the Seventh Circuit that claims based on out-of-court events, i.e., evidence-gathering, accrue "as soon as the constitutional violation occurs." *Moore v. Burge*, 771 F.3d 444, 446 (7th Cir. 2014). The court states that this is because police misconduct does not necessarily imply the invalidity of any given conviction. *See id; see also, e.g., Wallace v. Kato,* 549 U.S. 384 (2007), *Rollins v. Willett*, 770 F.3d 575 (7th Cir. 2014), and *Booker v. Ward*, 94 F.3d 1052 (7th Cir. 1996) (cases dealing with Fourth Amendment rule against unreasonable searches and seizures). However, in the cases that address this issue, there is usually no contest that the defendant committed the crime for which he was arrested. The defendant instead argues that excessive force was used during the valid arrest.

In *Evans v. Poskon*, 603 F.3d 362 (7th Cir. 2010), police officers burst into Mr. Evans' home to stop, under reasonable suspicion, his attempt to strangle someone to death. "According to the officers, Evans resisted arrest and had to be subdued; according to Evans, he offered no resistance and was beaten mercilessly both before and after the officers gained custody of him." *Id.* at 363. At the time of the opinion, Mr. Evans was serving 71 years for both attempted murder and for resisting arrest. He did not contest that he was guilty of the crime for which he was convicted; rather, he only contested the charges of resisting arrest. Judge Easterbrook concluded that, as Mr. Evans' contention that he did not resist arrest was incompatible for his conviction on that charge, he was barred from proceeding on that contention under *Heck*. *See id.* at 364. However, the judge ruled that

the contention that the officers used excessive force to effect custody is consistent with a conviction for resisting arrest, and was therefore not *Heck*-barred. A similar scenario occurred in *VanGilder v. Baker*, 435 F.3d 689 (7th Cir. 2006), after the defendant was arrested for public intoxication and taken to a nearby hospital for treatment. *See id.* at 690–91. While there, VanGilder resisted the taking of a blood test while strapped to a gurney. Because hospital personnel could not reach his veins, Baker struck him several times in the face. According to Baker, which VanGilder denied, VanGilder kicked Baker in the head during the struggle. Baker claimed in the police report to have responded by punching VanGilder 'repeatedly in the face with a closed fist.' The court found that "an action against Baker for excessive use of force does not necessarily imply the validity of VanGilder's conviction for resisting arrest." *Id.* at 692. The court explained that, "a judgment for VanGilder, should he prevail, would not create 'two conflicting resolutions arising out of the same or identical transaction.'" *Id.*, citing *Heck,* 512 U.S. at 484 (1994).

Mr. [REDACTED] was not convicted of a crime separate from his excessive force claims (e.g., driving recklessly, drug possession, etc.). Rather, he argues that he was battered and arrested falsely. The Fourth Amendment does not prohibit officers from arresting, without a warrant, a person for a minor offense. *See Atwater v. City of Lago Vista,* 532 U.S. 318 (2001). Mr. [REDACTED] was arrested for fleeing from the traffic stop and for refusing to comply with the officers. ROP, R 101-103. That he fled from the officers at the traffic stop was not contested at trial, nor does he seem to be denying those facts on appeal. Mr. [REDACTED] contests instead the aggravated battery charges. Therefore, is likely that Mr. [REDACTED]'s claims are not *Heck*-barred under *Evans*. The clock started once the unconstitutional behavior began.

The city has a strong argument that *Heck* never barred any of Mr. [REDACTED]'s claims of excessive force or related claims on this theory (e.g., unreasonable arrest or other rough treatment) because they are not incompatible with his conviction for resisting arrest. Even in *Hoeft v. Joanis,* 727

F. App'x 881 (7th Cir. 2018), when a defendant makes claims of coerced confessions *from the start*, the court found that "*Heck* never had any bearing on Hoeft's ability to sue for an unreasonable arrest, excessive force, or other rough treatment that preceded his no-contest plea because those claims, if successful, would not undermine his convictions." *Id.* at 883 (citing *Wallace v. Kato,* 549 US 384, 391 (2007) and *Hill v. Murphy,* 785 F.3d 242, 248 (7th Cir, 2015). But key to the ruling in this case was the defendant's abandonment of his appeal and his eventual plea of no contest, as he did not "contend that his plea of no contest was involuntary." *Id.,* citing *Mordi v. Zeigler*, 870 F.3d 703, 707–08 (7th Cir. 2017); *Hill*, 785 F.3d at 250 (Easterbrook, J., concurring). This seems to indicate that the lack of *Heck*-bar is because of the guilty/no contest plea, as a suit about excessive force and coercion of evidence has no bearing in a court case where the defendant admits to their guilt or pleads no contest.

Mr. [REDACTED] claims now that he was framed, and his arrest was primarily to cover up physically abusive behavior by the eight arresting officers. While he may not contest resisting the police officers by fleeing from the traffic stop, he has maintained his innocence vis-à-vis all charges of aggravated battery from the beginning. If Mr. [REDACTED]'s contends that he committed no battery against the officers and that [REDACTED]'s injury was indeed the result of his use of excessive force against Mr. [REDACTED]—that is, as Mr. [REDACTED] says, [REDACTED] hurt his knee by pressing it into Mr. [REDACTED]'s neck rather than Mr. [REDACTED] striking him—then the court may find that Mr. [REDACTED]'s claims of excessive force are incompatible with his conviction for aggravated battery.

II. A Fourth Amendment claim that implies the invalidity of a conviction for aggravated battery is barred by *Heck.*

The leading case addressing *Heck* vis à vis convictions made in error is *Okoro v. Callaghan,* 324 F.3d 488 (7th Cir. 2003). In *Okoro,* the defendant claimed that he had been the victim of a theft by

officers. *Id.* at 489. The court acknowledged that it was possible for him to be both guilty of drug possession, for which he was convicted, and for the officers to have stolen his property. *Id.* However, since the defendant had insisted from the outset that the officers had lied in their testimonies and that he had been trying to sell them the gems that they stole rather than heroin, his claims were *Heck*-barred until he "knock[s] out his conviction, which he has never done." *Id.* "A plaintiff's claim is *Heck*-barred despite its theoretical compatibility with his underlying conviction if specific factual allegations in the complaint are necessarily inconsistent with the validity of the conviction." *McCann v. Neilsen*, 466 F.3d 619, 621 (7th Cir. 2006) (citing *Okoro* at 490); *see also Douglas v. Vill. of Palatine,* No. 17 C 6207, 2021 WL 979156, at *3 (N.D. Ill. Mar. 16, 2021).

The facts of Mr. [REDACTED]'s case are distinguishable from *Okoro* in that Mr. [REDACTED] did not claim that the officers had framed him, nor did he contest that he did flee from the officers during the traffic stop. However, the Seventh Circuit has also previously ruled that, even after a defendant takes a guilty plea, if his lawsuit against the city "rests on a version of the event that completely negates the basis for his conviction," the claim is barred by *Heck*. *Tolliver v. City of Chicago*, 820 F.3d 237, 243 (7th Cir. 2016). Whether or not, in the abstract, their claim of excessive force could survive *Heck* is irrelevant. *See id.* While Mr. [REDACTED] did not take a guilty plea, it is likely that under this theory, since his facts of the case are at major if not complete odds with the story given by the officers, a suit against them may be considered *Heck*-barred by the court.

The Seventh Circuit has acknowledged that the *Heck* rule in application is complex. *See Moore v. Mahoney,* 652 F.3d 722, 726 (7th Cir. 2011). Here, the court ruled that "[a] prisoner convicted of battery of correctional officers could not allege, in a claim that those officers used excessive force against him, that he had committed no battery that would justify any use of force by the officers (instead claiming that he swatted away an unknown and hand then stood up before being tackled by officers)." *Douglas* at *4. If the plaintiff had argued that the officers overreacted to his battery, his

claim would have not been *Heck*-barred. However, since the plaintiff claimed no battery occurred at all to justify any use of force, the court found his excessive force claim was barred. The court recommended on remand that the district judge give "serious consideration to allowing a plea of equitable tolling," despite the expiration of the limitations period on excessive force claims. *Moore* at 726.

Despite this acknowledgement of the complexity of the *Heck* rule, the 7th Circuit does not ever seem to have ruled that an excessive force claim is barred by *Heck*. Though a successful appeal of his conviction might open Mr. [REDACTED] up for success on a case on the circumstances of his arrest (i.e., false arrest, being framed, etc.,) it seems unlikely that the court will find that the statute of limitations has not run out on Mr. [REDACTED]'s excessive force claims. It is not impossible, though: since Mr. [REDACTED]'s account of the incident is like Moore—that is, that Mr. [REDACTED] committed no battery at all against the officers and so being beaten and Tased was, indeed, excessive—then the court may find that the excessive force claims were *Heck*-barred. *See also Brengettcy v. Horton*, 423 F.3d 674, 683 (7th Cir. 2005) (use of excessive force *after* a plaintiff committed battery was not *Heck*-barred, as it "d[id] not undermine [the plaintiff]'s conviction or punishment for his own acts of aggravated battery"). However, Mr. [REDACTED] was also convicted on two counts of resisting a peace officer. If Mr. [REDACTED]'s resistance is found to be a result of trying to avoid injury from the excessive use of force, then his excessive force claims are incompatible with his arrest; but if on one count he resisted *before* any officer used excessive force against him, then his excessive force claims are not *Heck*-barred, because it is possible for Mr. [REDACTED] to both have resisted arrest and for the officers to have used too much force to try to gain compliance.

CONCLUSION

Because Mr. [REDACTED] does not contest that he fled from the traffic stop and does not

seem to contest in interviews that he resisted being pulled from his car, it is likely that the court will find that his § 1983 excessive claims accrued at the time of arrest, since they do not invalidate his conviction on at least one count of obstructing a peace officer. However, Mr. [REDACTED]'s claim that the police officers framed him for aggravated battery *does* call into question the validity of his conviction: Mr. [REDACTED]'s account of the arrest is that the officers viciously beat him, and that the injuries sustained by both officers are the result of their uses of force, not Mr. [REDACTED] striking them while resisting arrest. Mr. [REDACTED] may have an argument that, as the excessive force and framing claims relate directly to his conviction for aggravated battery, his claims are *Heck*-barred and the statute of limitations has not run out yet. The court does not seem to have been faced with a case where the cause of the initial traffic stop—suspected drug possession—was not the cause of arrest, nor was Mr. [REDACTED] convicted of any drug crimes at trial. If Mr. [REDACTED] may pursue his claim that the officers framed him for aggravated battery after his conviction is overturned, then it is possible that his § 1983 claims have not expired under the Illinois statute of limitations. However, it seems unlikely that the court will deviate from its general position that excessive force claims do not, by necessity, invalidate convictions for uncontested crimes.

Applicant Details

First Name	**Clayton**
Last Name	**Goetz**
Citizenship Status	**U. S. Citizen**
Email Address	**cjgoetz2@wisc.edu**
Address	**Address** **Street** **425 W Washington Ave, 408** **City** **Madison** **State/Territory** **Wisconsin** **Zip** **53703** **Country** **United States**
Contact Phone Number	**4155802529**

Applicant Education

BA/BS From	**University of San Francisco**
Date of BA/BS	**May 2014**
JD/LLB From	**University of Wisconsin Law School** **http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=35002&yr=2009**
Date of JD/LLB	**May 11, 2024**
Class Rank	**5%**
Law Review/ Journal	**Yes**
Journal(s)	**Wisconsin Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Anderson Center Seventh Circuit Moot Court Competition**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Mandell, Jeff
jmandell@staffordlaw.com
608-210-6303
Tokaji, Daniel
tokaji@wisc.edu
Klug, Heinz
heinz.klug@wisc.edu
608-262-7370

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Clayton J. Goetz (Clay – he/him)
425 W Washington Ave 408, Madison, WI 53703 • 415-580-2529 • cjgoetz2@wisc.edu

May 30, 2023

The Honorable Jamar Walker
United States District Court, District of Connecticut
Richard C. Lee United States Courthouse
141 Church Street, Room 107
New Haven, CT 06510

Dear Judge Walker,

I am a student at the University of Wisconsin Law School (ranked 8th in my class) writing to apply for a 2024–25 clerkship with you after I graduate in April 2024. I am particularly eager to clerk at a district court to better understand trial practice, the Federal Rules of Evidence, and the rules of procedure. I am interested in litigation, especially elections, and I like the challenge of thoughtful and fast-paced work. I would like to clerk for you especially given your time as a federal prosecutor, as I start my career seeking to understand excellence in trial advocacy.

I am a seasoned professional who is eager to learn as a new attorney. Prior to law school, I worked in marketing, sales, and recruiting for nine years, including full-time during college. It equipped me to hit the ground running in new professional environments. I enjoy improving my legal writing and I work well with others. During law school, I have sought opportunities to conduct substantive legal research and analysis. After clerking, I hope to practice in civil litigation. I would like to pursue elections, voting, and LGBTQ+ rights cases either pro-bono or full-time as my career develops. I am currently a summer associate at Covington & Burling in Washington, D.C., and am writing a young adult science fiction and fantasy novel in my free time.

I would be very interested in interviewing for a clerkship with your chambers and will make myself available at your convenience to speak further. Thank you for your consideration.

Respectfully,

Clay Goetz

Clayton J. Goetz (Clay – he/him)

425 W Washington Ave 408, Madison, WI 53703 • 415-580-2529 • cjgoetz2@wisc.edu

Education

University of Wisconsin Law School — Anticipated May 2024
Juris Doctor Candidate — *Madison, WI*

GPA: 3.88 (Class Rank: 8th of 281 students; Top 2%)

Honors: Best Performance in a Course: *Contracts I; Constitutional Law II*
2022–23 Constitutional Law Award for excellence in the study of constitutional law

Activities: Student Bar Association: *President*; QLaw: *Co-President*
Wisconsin Law Review: *Senior Online Editor & Diversity Chair*
Moot Court: *Tryouts "Best Oralist;" Semi-Finalist Anderson Seventh Circuit Competition*
Other: American Constitution Society; Pro Bono Unemployment Appeals Clinic

University of San Francisco — May 2014
B.S. Organizational Behavior & Leadership — *San Francisco, CA*

Work Experience

Judicial Intern — Forthcoming, Fall 2023
Wisconsin Supreme Court, Justice Jill Karofsky — *Madison, WI*

Summer Associate — May 2023–July 2023
Covington & Burling LLP — *Washington, D.C.*

Research Assistant — January 2023–Present
Assistant Professor Joshua Braver, University of Wisconsin Law School — *Madison, WI*

- Researched 18th and 19th century treatises to frame originalist constitutional law arguments.

Legal Intern, Litigation — September 2022–December 2022
The League of Women Voters of the United States — *Washington, D.C. (remote)*

- Conducted state-by-state legal research on ballot initiatives and referenda processes.
- Tracked federal judiciary across all district and appellate courts, compiling judicial biographies and case outcomes related to voting rights, ballot access, and other key issue areas.

Law Clerk — May 2022–August 2022
Stafford Rosenbaum LLP — *Madison, WI*

- Supported elections & political law, appellate, and litigation practices.
- Conducted legal research, wrote internal and client-ready memos; wrote section of argument at summary judgment in state court; analyzed documents, administrative decisions, and case law to support arguments before the Wisconsin Elections Commission.
- Researched: civil procedure on appeal to the Seventh Circuit, Wisconsin constitutional interpretation, Wisconsin elections law, breach of contract damages, property law, and others.

Recruiter & Account Manager — August 2019–July 2021
Premier Talent Partners — *Palo Alto, CA*

- Placed talent in executive/personal assistant, marketing, sales, and G&A positions; wrote job postings, reviewed resumes, and interviewed 15+ candidates weekly; interfaced with clients daily, managed 20+ accounts, won new business, and grew existing lines of business.
- Co-founded LGBTQ+ employee resource group; DEIB Task Force; 2019 "Rookie of the Year."

Other Experience: Freelance Marketing & Digital Media Consultant (*Self*); Sales Consultant (*The Home Depot Interiors*); Sales & Marketing Manager, (*Alameda Mortgage Corporation*); Co-Founder, Marketing (*Ember, crowdfunded*); Assistant Account Executive (*Edelman Digital*); PR Intern (*H3O Communications*)

Volunteering and Civic Engagement

Steering Committee Member — November 2017–July 2021
The Human Rights Campaign, San Francisco Bay Area — *San Francisco, CA*

Interests and Highlights

Love to bake recipes from The Great British Baking Show; writing a young adult science fiction novel; language learning enthusiast: intermediate Spanish, basic Arabic, some Polish.

Course History Report for Clayton Goetz

This document lists the courses, credits, and reported grades for the above-named student of the University of Wisconsin Law School during their current matriculation. This letter is not an official transcript and does not contain information concerning previous course work at the University of Wisconsin-Madison.

Fall 2021

Course #	Title	Instructor	Credits	Grade
714-004	Civil Procedure I	Mcdermott	4	A
723-005	Legal Research and Writing	Peterson	3	A
726-003	Intro-Substan Criminal Law	Gross	4	B+
711-002	Contracts I	Sharafi	4	A
Semester:	Credits: 15 GPA Credits: 15	GPA Points: 57.2	GPA: 3.81	
Overall:	Credits: 15 GPA Credits: 15	GPA Points: 57.2	GPA: 3.81	

Spring 2022

Course #	Title	Instructor	Credits	Grade
715-003	Torts I	Mcdermott	4	A-
723-013	Legal Research and Writing	Peterson	3	A-
724-003	Property	Ard	4	A
802-001	Civil Procedure II	Tokaji	3	A
Semester:	Credits: 14 GPA Credits: 14	GPA Points: 53.9	GPA: 3.85	
Overall:	Credits: 29 GPA Credits: 29	GPA Points: 111.1	GPA: 3.83	

Fall 2022

Course #	Title	Instructor	Credits	Grade
899-001	Law Review	Yackee	2	S
815-005	Appellate Advocacy II	Weigold	1	S
854-014	Law Externship	Kite	3	S
801-001	Evidence	Schwartz	4	A-
740-001	Constitutional Law II	Klug	3	A+
731-001	Constitutional Law I	Schwartz	3	A
Semester:	Credits: 16 GPA Credits: 10	GPA Points: 39.7	GPA: 3.97	
Overall:	Credits: 45 GPA Credits: 39	GPA Points: 150.8	GPA: 3.87	

Spring 2023

Course #	Title	Instructor	Credits	Grade
771-001	Trusts & Estates I	Maier	2	A-
725-002	Intro to Criminal Procedure	Tobin	3	A+
815-001	Appellate Advocacy II	Tai; Stevenson	3	S
850-001	Professnl Responsibilities	Pierce	3	A-
899-001	Law Review	Yackee	2	S
940-106	Law of Democracy	Yablon	3	A
Semester:	Credits: 16 GPA Credits: 11	GPA Points: 43.4	GPA: 3.95	
Overall:	Credits: 61 GPA Credits: 50	GPA Points: 194.2	GPA: 3.88	

Fall 2023 - Future Courses

Course #	Title	Instructor	Credits	Grade
742-001	Taxation I	Gondwe	4	
744-001	Administrative Law	Seifter	3	
854-018	Judicial Internship	-	4	
950-002	Complex Litigation	Everts; Leffel	3	

Semester:	Credits: 14	GPA Credits: 0	GPA Points: 0	GPA: n/a
Overall:	Credits: 75	GPA Credits: 50	GPA Points: 194.2	GPA: 3.88

Report Generated on 06/06/2023

Official transcripts available from the University of Wisconsin Office of the Registrar.

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in support of Clay Goetz's application to serve as a law clerk in your chambers. Clay worked with me and my colleagues at Stafford Rosenbaum LLP last summer, and he has stayed in touch with me since. Clay is thorough, thoughtful, and innovative. He thinks clearly, writes cogently, and communicates concisely. He is a pleasure to work with and to be around. He would be an asset to your chambers.

As a point of reference, I have been in private practice for more than 15 years. After clerking for Judge Randolph on the D.C. Circuit, I worked at Bartlit Beck in Chicago and Jones Day in DC before my wife and I moved to Madison, Wisconsin. Over the past eight years, I have built a thriving practice, focused primarily on two distinct areas: complex commercial litigation and election/democracy law. Wisconsin, for better or worse, is an unexpected hotbed for both areas.

In my practice and my community engagement, I have the opportunity to meet a number of law students. Clay stands out from the crowd. He first reached out to me for an informational interview in his first semester of law school; he was interested in knowing more about election-law practice. We met for coffee. I was struck then, as I have been since, by the maturity and focus Clay brings to his work, in no small part because he worked successfully for several years before deciding to attend law school. After we met for coffee, and without seeking or receiving any help from me, Clay applied for a summer position at Stafford and impressed my colleagues enough to be hired.

During his time at the firm, Clay worked in a wide variety of subject areas and with most of our lawyers. He was popular, and his assistance was in demand. He undertook a complicated research memo for me, exploring the history of how courts have understood Article I, Section 9 of the Wisconsin Constitution, which proclaims that every person is entitled to a remedy for every wrong, and helping me think through innovative ways that may be applied to repel attacks on voting rights and election administration. Colleagues report that he did strong work in other areas, including developing a damages argument based on how long a production line was stalled due to the opposing party's conduct.

Throughout, Clay was eager to learn and improve, taking the initiative to follow up with attorneys, asking how his work could be strengthened and what next steps would come after his work, both so that he could understand the workflow better and so that he could offer to help. In a similar vein, during the past year, Clay reached out to share a draft of his law review note. What struck me was Clay's genuine interest in substantive feedback. I read his note—a deep dive into how Wisconsin law should handle election emergencies; it was quite good and, in my estimation, analytically stronger than the leading article in the field, which was published in a top-40 law review—and sent him comments. Rather than shy away from the quantity of those comments, several of which suggested additional areas of inquiry that promised to require more work, some with highly reticulated statutes, Clay thanked me and asked if we could meet to discuss these suggestions in more detail. When we met, Clay had given sincere thought to my comments and had detailed follow-up questions that showed he had already delved into the suggested research.

All of this is to say that I am bullish on Clay's future as a lawyer—and more immediately as a law clerk. He has the intellect and the work ethic to be highly successful. And he has the interpersonal skills and the motivation to make space for himself in whichever parts of the legal community that he chooses. I have no doubt that Clay would be a great addition to your chambers and would help advance your work of administering justice.

If I can be of assistance or provide additional information, please do not hesitate to contact me.

Sincerely,

Jeffrey A. Mandell
Stafford Rosenbaum LLP
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
JMandell@staffordlaw.com
608.210.6303

June 9, 2023

Re: Clayton Goetz

Dear Judge:

I enthusiastically recommend Clay Goetz for a judicial clerkship in your chambers. Clay was a student in my Civil Procedure II course in the Spring of 2022. He also served as our Student Bar Association President in the 2022-23 academic year, during which we had monthly meetings and I got to know him very well. Clay is a law student of exceptional ability, with strong leadership skills and a great work ethic. For these reasons, detailed below, I highly recommend him for a judicial clerkship.

As Clay's resume reflects, he is one of the top students in the Class of 2024. Although his academic credentials and experience are only part of what would make him a great clerk, I will start there before turning to his distinctive personal qualities.

Clay came to law school with considerably deeper experience than most of his peers. After graduating from college in 2014, he worked in various industries, including digital media, sales and marketing, and employee recruitment. He has long had a commitment to diversity, equity, and inclusion, manifest in his cofounding of an LGBTQ+ employee resource group and participation in a DEIB task force with his employer prior to law school. During that time, he also served on the Steering Committee of the Human Rights Campaign in the San Francisco Bay Area. Clay has continued to fulfill his commitment to inclusivity as a law student, most notably through his leadership of SBA, discussed further below.

My first contact with Clay was during his first year of law school, 2021-2022. He was a student in my Civil Procedure II course. This was a large course, mostly composed of 2L and 3L students but also including some 1L students who chose to take that course as an elective. Here at UW Law, Civil Procedure II focuses primarily on more complex issues of jurisdiction, choice of law, and preclusion. It was a large class, consisting of 73 students. Even though Clay was still a 1L student, he quickly distinguished himself as one of the sharpest legal minds in the class. He would often volunteer to participate in class discussions and was always prepared when called on. His in-class comments consistently demonstrated not only a careful attention to the cases, statutes, and rules, but also a deep understanding of the competing values underlying the legal doctrine. I was therefore unsurprised that his exam – a comprehensive in-class exam, consisting of 26 multiple choice and two essay questions – was one of the best in the class, earning him an A. It bears emphasis that this was on a curve in which Clay, then still a 1L, competed against 2L and 3L students. One cannot perform well on such an exam without both having great writing skills and the capacity to perform under intense time pressure, tools that will be essential to his work as a law clerk.

During the 2022-2023 academic year, I got to know Clay much better due to his service as

SBA President. Clay was elected to serve in this capacity at the end of his 1L year. This is unusual, a testament to his maturity, his well-developed leadership skills, and the high esteem in which he is held by his peers. Throughout his tenure as SBA President, during the summer preceding his 2L year and throughout that academic year, Clay and I met monthly – usually just the two of us, although occasionally accompanied by other members of the SBA board or my leadership team.

Although all of the SBA presidents I've worked with have been impressive people, Clay was undoubtedly the best. He kept his finger on the pulse of the wide range of students who were his constituents, helping me understood their varying needs. Among his principal concerns as SBA President was the well-being – particularly the mental health – of our students. They have been experiencing greater mental health challenges for years, which intensified during the first two years of the pandemic. I vividly recall Clay's opening remarks to the 1L class that entered in Fall 2022, at the start of his tenure as SBA President, during which he passionately emphasized the importance of attending to their own mental health and seeking help when needed. I cannot thank him enough for doing so. Although this remains a challenging issue for us and other law schools, we are making strides toward providing our students with the resources and support they need to succeed and thrive. Clay deserves much of the credit for this progress.

In addition to his SBA work and high performance in his classes, Clay has done many other things to sharpen his skills and to serve others during law school. He has served as an editor of the *Wisconsin Law Review*, and is now Senior Online Editor and Diversity Chair. He is an active participant in Moot Court, selected as "Best Oralist" during tryouts and becoming a semifinalist in the Anderson Seventh Circuit Competition. He is active in the American Constitution Society, Q-Law, and the Pro Bono Unemployment Appeals Clinic. Outside the law school, he worked on election law and litigation matters at Stafford Rosenbaum in the Summer of 2022, then as a legal intern with the League of Women Voters national office (remotely) during the Fall of 2022. He is currently a research assistant to Professor Josh Braver, an emerging star who is part of our constitutional law faculty, and is working as a summer associate at Covington and Burling in Washington, D.C. In the Fall of 2023, he will serve as a judicial intern for Wisconsin Supreme Court Justice Jill Karofsky. As these varied experiences demonstrate, Clay is working diligently to develop the skill set that will allow him to become a great law clerk and lawyer.

On top of all this, Clay is a wonderful person. As noted above, I got to know him very well during his tenure as SBA President, and think the world of him. He cares deeply about his fellow students and the law school community. He has a deep commitment to the values that guide our institution, including excellence in teaching and research and providing an inclusive learning environment for all students. I've been especially impressed by his strong commitment to freedom of speech and to providing a hospitable climate for people with a wide variety of opinions and ideological views. Creating an environment in which we can learn from people with whom we disagree, not just those who share are perspective, is a core value of this law school. It's also something he has worked hard to help us achieve, in his capacity as SBA President and throughout his time at our law school. I have no doubt that he will be a great lawyer and a future leader, whatever career path he ultimately chooses.

Daniel P. Tokaji
Fred W. & Vi Miller Dean and Professor of Law
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For all these reasons, it is both a pleasure and an honor to recommend Clay for a clerkship with you. Please don't hesitate to call or email if there are any further questions I can answer. And thank you for considering his application.

Sincerely,

Daniel P. Tokaji
Fred V. & Vi Miller Dean and Professor of Law

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May 31, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to enthusiastically recommend Clayton Goetz to you as an applicant for a judicial clerkship. I have taught law here at the Law School for the past twenty-seven years and publish in the areas of constitutional law, human rights and international property issues from land reform to patents and access to medicines. I regularly teach the first-year property law course as well as courses in constitutional law, European Union law, human rights and international law. I first met Clayton Goetz as a student in my Fall 2022 Constitutional Law II class which adopts a comparative approach to understand the Bill of Rights, and was immediately impressed by his intelligence and engagement in class. Clayton stood out in class and in the blind graded exam achieved the top mark in the class, a grade that is consistent with his excellent performance in all his classes. I have no doubt he will make an excellent law clerk.

I have since had the opportunity to meet with Clayton to discuss his interest in serving as a law clerk and have been very impressed by his maturity and commitment to making a clerkship part of his legal career. In addition to his stellar academic performance Clayton has been a very active member of the law school community. Clayton's leadership skills have been recognized by his colleagues who elected him President of the Student Bar Association. In addition Clayton has been selected to serve as the Senior Online Editor & Diversity Chair of the Wisconsin Law Review and was named "Best Oralist" in our Moot Court tryouts. Outside the Law School, Clayton competed in and was a Semi-Finalist in the Anderson Center Seventh Circuit Moot Court Competition. Clayton also served as a Legal Intern for the League of Women Voters of the United States where he conducted legal research on state level ballot initiatives and referenda processes.

Last summer, after his first year of law school, Clayton had the opportunity to work as a law clerk for Stafford Rosenbaum LLP, a mid-sized Wisconsin law firm where he conducted legal research, wrote internal and client-ready memos, and had the opportunity to write a section of argument for a summary judgment motion in state court as well as analyze documents, administrative decisions, and case law to support arguments before the Wisconsin Elections Commission.

Both in class, and in discussion outside of class, I have found Clayton to be a courteous and polite individual with whom it is a delight to engage. He is a highly motivated individual who believes the opportunity to serve as a law clerk is an important step in becoming the lawyer he wishes to be. I have no doubt that Clayton will be an excellent law clerk with whom you will find it a pleasure to work.

Please do not hesitate to contact me if you have any questions.

Yours sincerely,

Heinz Klug

John and Rylla Bosshard Professor of Law

Heinz Klug - heinz.klug@wisc.edu - 608-262-7370

Clayton J. Goetz (Clay – he/him)
425 W Washington Ave 408, Madison, WI 53703 • 415-580-2529 • cjgoetz2@wisc.edu

Writing Sample

I prepared the attached brief for the Anderson Center Seventh Circuit Moot Court Competition. The brief supports an Appellant, Frey Corporation, seeking to disqualify Judge Baratheon, a district court judge, for bias under the Due Process Clause of the Fourteenth Amendment. In this case, Judge Baratheon entered default judgment against Frey for discovery violations. In response, Frey issued a press release criticizing Judge Baratheon. Judge Baratheon subsequently gave a media interview and made Facebook comments about Frey's conduct during discovery and the merits of the case itself. I have excluded a separate issue on which my moot court partner wrote, whether default judgment was an appropriate sanction for discovery violations. The below work is entirely my own.

ISSUES PRESENTED FOR REVIEW

I. Whether the district court judge was required to recuse himself under the Due Process Clause of the Fourteenth Amendment when he made disparaging remarks about a litigant in a national media interview and on social media while presiding over the case.

STATEMENT OF THE CASE

A. Discovery and Default Judgment

On June 1, 2020, Vale County sued Frey Corporation in connection with Frey's marketing of its opioid drug, "Leyka ER." R. Ex. B 2. During discovery, Frey suspected its attorneys of misconduct. R. Ex. A 1. Prior counsel inaccurately certified that Frey had turned over all responsive documents in response to a motion to compel. *Id.* Noting this, Frey moved to withdraw counsel and substitute new counsel, and its motion was granted. *Id.*

Substitute counsel for Frey inherited a discovery record containing inaccuracies about which responsive documents had actually been produced to opposing counsel. R. Ex. D 2. As a result, at the close of discovery, Frey mistakenly certified it had produced all responsive documents. *Id.* Vale moved to compel production, and at a hearing on Vale's motion, Frey disclosed that it had "overlooked a small number of responsive documents" and was working to produce them. *Id.* Frey subsequently produced 371,423 documents over the next ninety days. *Id.* Meanwhile, Vale aggressively pursued sanctions. R. Ex. A 2. As a penalty for "willfully withholding" responsive documents, Judge Baratheon entered default judgment against Frey. R. Ex. B 3. The order was relayed orally at the May 5

hearing and subsequently entered with findings of fact on May 16, 2022. *Id.*; R. Ex. G 1.

B. Judge Baratheon's Media Interview and Facebook Comments About the Case

Within hours of the May 5, 2022, hearing on Vale's motion for sanctions and default judgment, Frey issued a press release disagreeing with the court's ruling. R. Ex. H. The press release stated that Frey "strongly disagrees with the court's ruling" and that "[i]nstead of applying the law to the facts before it, the court improperly adopted the findings of a different federal court in a different case," *Id.* This referred to *King's Landing*, an earlier case Frey had settled amidst allegations of discovery misconduct. R Ex. G 2. The morning after the press release was issued, an outraged Judge Baratheon took to the national media and initiated what he later referred to as "a media firestorm problem." R. Ex. C 2. Judge Baratheon gave an interview to the National Westeros disparaging Frey's participation in discovery, claiming, "It was like a plot out of a John Grisham movie, except … worse …." R. Ex. G 1.

Later that afternoon, Judge Baratheon took to Facebook to complain about the lack of local media coverage and to discuss the case with commentors. R. Ex. F. He posted, "Why is it that national news outlets are contacting my office about a case I preside over and the local news is not interested?" *Id.* Facebook commentors wrote back, interpreting his post and comments as a stand against Frey: "I don't know if you're going to get the help or platform you need from those with power/deep pockets. Many of Illinois' powerful have ties to pharmaceuticals." *Id.*

Another commentor wrote, "They misrepresented that medication from the beginning … coming from my nursing point of view." *Id.*

Judge Baratheon engaged with the commentors, explaining that his post concerned "a $1.2 billion opioid case" and that "[o]ur area has been rocked with that drug for decades. Lots of interesting and new developments about the manufacturers…." *Id.* To another, he wrote, "This is an earth shattering case, especially for our community." *Id.* He lamented the lack of local coverage, writing, "Fake news is not always what they publish, but what they choose not too [sic] also." *Id.*

Judge Baratheon admitted holding a position against Frey in the events of the earlier *King's Landing* case, which he did not preside over, telling the National Westeros: "I did say if they were in my court I probably would have found them in contempt." R. Ex. G 2. Judge Baratheon did exactly that—and entered default judgment as the first and only sanction in the record, R. Ex. A 2, in a case with claims of more than $1.2 billion. R. Ex. C 3.

Judge Baratheon then denied Frey's motion to disqualify. R. Ex. A 2. Explaining his media and Facebook commentary, he claimed to be so "taken aback" by Frey's press release that "[he] felt compelled to … rectify the situation immediately" in order to "uphold the integrity of the court." R. Ex. C 1. He added, "[a]ny frustration by the Court toward the media reflects no bias or prejudice toward Defendant." R. Ex. C 4.

Vale filed the initiating Complaint on June 1, 2020. R. Ex. A 1. Judge Baratheon entered default judgment on May 16, 2022. *Id.* Frey timely filed its notice of appeal on December 2, 2022. R. Order of Jan. 10, 2023. This court granted an appeal on January 10, 2023. *Id.* The claims presented for review include: (1) Judge Baratheon's grant of Vale's February 25, 2022, motion for sanctions for alleged discovery violations; (2) Judge Baratheon's May 16, 2022, entry of default judgment; and (3) Judge Baratheon's May 17, 2022, denial of Frey's motion to disqualify. R. Order of Jan. 10, 2023; R. Ex. A 2.

SUMMARY OF THE ARGUMENT

The district court erred when it denied Frey's motion to disqualify. Under the Fourteenth Amendment's Due Process Clause, Judge Baratheon demonstrated an unconstitutional potential for bias: having shown actual bias, embroiling himself in a media controversy with Frey, and raising a presumption of bias under all of the circumstances. The district court should be reversed, and the case should be remanded for new proceedings before an impartial judge.

ARGUMENT

I. Judge Baratheon's public, out of court statements show an unconstitutional potential for bias under the Due Process Clause of the Fourteenth Amendment.

This court reviews constitutional claims of partiality contravening the Due Process Clause of the Fourteenth Amendment *de novo*. *See United States v. Atwood*, 941 F.3d 883, 885 (7th Cir. 2019); *Williams*, 949 F.3d at 1061. This includes the district court's legal conclusions. *Del Vecchio*, 31 F.3d at 1363 (citing *Drake v. Clark*, 14 F.3d 351, 355 (7th Cir. 1994)).

The due process clause of the Fourteenth Amendment guarantees litigants an impartial judge and a fair trial. *United States v. Williams*, 949 F.3d 1056, 1061 (7th Cir. 2020) (citing *Bracy v. Gramley*, 520 U.S. 899 (1997)). A corporation may avail itself of this due process protection. *See, e.g.*, *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). Determining partiality is not a subjective inquiry into the mind of the judge. *Williams*, 949 F.3d at 1061. Rather, it is an objective examination of the circumstances. *Id.* To determine "whether there is an unconstitutional 'potential for bias,'" the test is "whether the average judge in [the impugned judge's] position is 'likely' to be neutral." *Id.* (quoting *Caperton*, 556 U.S. at 881).

This court has recognized four *per se* circumstances where potential for bias "is too high to be constitutionally tolerable." *Williams*, 949 F.3d at 1061 (citing *Rippo v. Baker*, 137 S. Ct. 905, 907 (2017) (per curiam)). First, if the judge demonstrates actual bias. *Id.* Second, if the judge had significant, personal involvement as a prosecutor in a critical decision regarding the defendant's case. *Id.* (quoting *Williams v. Pennsylvania*, 136. S. Ct. 1899 (2016)). Third, if the judge has a financial incentive in the outcome of the case. *Id.* (citing cases). And fourth, when a judge becomes "personally embroiled" in controversy with a litigant. *Id.* (citing *Mayberry v. Pennsylvania*, 400 U.S. 455, 465–66 (1971)); *see also Del Vecchio v. Ill. Dep't of Corr.*, 31 F.2d 1363, 1373–75 (7th Cir. 1994) (en banc). Additionally, "recusal … may be required outside of these specific instances if the probability of actual bias is high enough." *Suh v. Pierce*, 630 F.3d 685, 691 (7th Cir. 2011) (citing *Caperton*, 556 U.S. at 884).

This case concerns two *per se* grounds for disqualification and a third under all of the circumstances. First, Judge Baratheon demonstrated actual bias by making inflammatory statements about Frey in a media interview and by giving opinions about Frey's culpability as an opioid manufacturer on Facebook. Second, Judge Baratheon embroiled himself in controversy with Frey by creating news media and social media controversy in response to Frey's press release. Third, Judge Baratheon raised a constitutionally impermissible probability of bias considering his conduct under all of the circumstances. As a result, Frey was denied the due process guarantee of an impartial judge under the Fourteenth Amendment and respectfully asks this court for new proceedings before an impartial judge.

A. Judge Baratheon showed actual bias in his comments to the media and on Facebook.

While *Caperton* addressed the "potential" for bias, "actual bias, if disclosed, no doubt would be grounds for appropriate relief." *Caperton*, 556 U.S. at 883. Judge Baratheon showed actual bias in at least four ways. ***First***, Judge Baratheon positioned himself against Frey before the case even began. ***Second***, Judge Baratheon chose a scorched earth response to Frey's press release. ***Third***, Judge Baratheon lamented the lack of local media attention, which is injurious and prejudicial to Frey. ***Fourth***, Judge Baratheon blamed Frey for the opioid crisis in his comments on Facebook. Judge Baratheon's demonstration of actual bias against Frey required his disqualification and now requires new proceedings before an impartial judge.

First, Judge Baratheon took a position against Frey in the events of the prior, unrelated *King's Landing* case. He told the National Westeros, "I did say if they were in my court I probably would have found them in contempt." R. Ex. G 2. Before presiding over this case, Judge Baratheon believed Frey deserved contempt. In its review, this court presumes that a judge will act impartially, *United States v. Baskes*, 687 F.2d 165, 170 (7th Cir. 1981). However, here, Judge Baratheon opined about how he would rule if Frey was before him and then actually did just that. R. Ex. A 2. Judge Baratheon's first and only sanction for contempt was to enter default judgment—no other sanction is noted on the record. R. Ex. A. Default judgment is used "only in extreme situations," *Grun v. Pneumo Abex Corp.*, 163 F.3d 411, 425 (7th Cir. 1998), and when other, lesser sanctions have failed. *See Crown Life Ins. Co. v. Craig*. 995 F.2d 1376, 1376 (7th Cir. 1993). Thus, Judge Baratheon admitted to bias against Frey before presiding over this case, and his actions confirmed his bias.

Second, Judge Baratheon chose a scorched earth approach in respond to Frey's press release. On May 5, after the hearing in which Judge Baratheon orally entered default judgment, R. Ex. A 2, Frey issued a press release stating it "strongly disagrees with the court's ruling" and that "[i]nstead of applying the law to the facts before it, the court improperly adopted the findings of a different federal court in a different case," R Ex. H. Press releases are a common method of communicating a corporate litigant's legal narrative and strategy to key stakeholders. *See* James F. Haggerty, *An Overview to Litigation PR & Communications*, Chambers and

Partners, https://chambers.com/content/item/3480 (last visited Feb. 7, 2023). Judge Baratheon, despite his judicial experience, was so "taken aback" by this common practice that "[he] felt compelled to … rectify the situation immediately." R. Ex. C 1. Judge Baratheon stated that Frey engaged in "the worst case of document hiding that I've ever seen. It was like a plot out of a John Grisham movie, except … worse …." R. Ex. G 1. Speaking with the authority of the court and upon no evidentiary basis, he castigated Frey publicly: "This was a concerted effort to hide these documents." R. Ex. G 1. What Judge Baratheon dubbed a "media firestorm" was the manifestation of his bias against Frey. R. Ex. C 2.

Further, his comments serve no legitimate purpose to clarify or communicate the events of the case to the public because the record does not contain any evidence supporting Judge Baratheon's dramatic account. In his written order entering default judgment, Judge Baratheon did not cite a single fact to support his finding that Frey willfully withheld documents. R. Ex. B. Instead, Judge Baratheon chose to make inflammatory sound bites to make headlines—the article containing the Judge's comments was titled: "Frey Opioid Saga 'Like A John Grisham Movie,' Judge Says." R. Ex. G 1.

Third, Judge Baratheon showed actual bias when he invited further media scrutiny that would be injurious and prejudicial to Frey. He posted on Facebook, "Why is it that national news outlets are contacting my office about a case I preside over and the local news is not interested?" R. Ex. F 1. Unsatisfied by a national media audience, Judge Baratheon sought out additional channels for his

inflammatory remarks. This is prejudicial to Frey because local media coverage of the Judge's remarks posed a special risk of tainting a local jury pool as Frey pursues its options to proceed to trial on the merits.

Fourth, Judge Baratheon showed actual bias when commented on Facebook about the merits of the case. Replying to a commentor asking why the case was newsworthy, he stated it "[i]s a $1.2 billion opioid case. Our area has been rocked with that drug for decades. Lots of interesting and new developments about the manufacturers…." R. Ex. F 2. However, there were no factual findings about Frey as he implied. The case had not yet gone to trial. In that comment, Judge Baratheon clearly tied Frey to the negative effects of drug abuse that "rocked" the area "for decades." R. Ex. F 2. Judge Baratheon replied to another commentor, "This is an earth shattering [sic] case, especially for our community." R. Ex. F 3. The Facebook commentors understood these comments to express a position against Frey in the active case, and Judge Baratheon made no attempt to disavow those conclusions. R. Ex. F 2. Under each of these four circumstances, Judge Baratheon showed actual bias against Frey. Therefore, the right to due process under the Fourteenth Amendment entitles Frey to new proceedings before an impartial judge.

B. Judge Baratheon embroiled himself in controversy by giving a media interview and posting on Facebook in response to Frey's press release.

Judge Baratheon embroiled himself in a public dispute with Frey, raising an independent basis for bias against Frey. When a judge becomes "personally embroiled" with a litigant, due process requires a new judge to oversee proceedings. *Mayberry*, 400 U.S. at 465–66. Becoming embroiled with a party may be shown by

"marked personal feelings" or what is described as a "running, bitter controversy." *Id.* at 464–65. Here, Judge Baratheon showed both.

Judge Baratheon took Frey's press release personally. He claimed that "Frey's statements directly impugned the integrity of the Court *and of this Judge*." R. Ex. C 4 (emphasis added). As discussed above, Judge Baratheon then took it out on Frey in the press. He even called the local media "fake news." R. Ex. F 3. Judge Baratheon's inflammatory remarks reflect "marked personal feelings" that disqualified him from serving as "the image of 'the impersonal authority of law.'" *Mayberry*, 400 U.S. at 465 (quoting *Offutt v. United States*, 348 U.S. 11, 17 (1954)).

Judge Baratheon's actions can be described as a running, bitter controversy sparked by personal offense at Frey's press release. After giving an interview to the National Westeros, R. Ex. G, Judge Baratheon showed clear frustration that his message against Frey was not going further. *See* R. Ex. F 3. Denying Frey's motion to disqualify, he justified and obfuscated his outrage: "Any frustration by the Court toward the media reflects no bias or prejudice toward Defendant." R. Ex. C 4. However, the standard for bias requiring recusal is objective, and the judge's appraisal of his own impartiality is irrelevant to the inquiry. *Caperton*, 556 U.S. at 881. Judge Baratheon's *post hoc* explanation of his outrage as being directed towards the media is illusory and unconvincing in light of how he engaged with Facebook commentors, especially when tying Frey to the effect of opioids in the community. R. Ex. F 2.

Applicant Details

First Name	**Amelia**
Middle Initial	**Y**
Last Name	**Goldberg**
Citizenship Status	**U. S. Citizen**
Email Address	**ayg237@nyu.edu**
Address	**Address** Street **1391 Dean St #3W** City **Brooklyn** State/Territory **New York** Zip **11216** Country **United States**
Contact Phone Number	**19179918635**

Applicant Education

BA/BS From	**Harvard University**
Date of BA/BS	**May 2019**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 15, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Review of Law and Social Change**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Gottlieb, Christine
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Cox, Adam
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This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am a rising 3L at New York University School of Law. I am enclosing my application for a clerkship in your chambers for the term beginning in fall 2024 or any subsequent term. As a public interest law student interested in civil rights law, particularly in the family defense space, working as your clerk would be an invaluable opportunity to sharpen my skills and prepare for what I hope will be an impactful career.

Included below are my unofficial transcript, resume, writing sample, and three letters of recommendation. My writing sample is a brief that I produced in the NYU Law Family Defense Clinic for a client who was seeking expungement of her record in New York's State Central Register of Child Abuse and Maltreatment. I developed this brief over the course of the school year, beginning by interviewing my client and analyzing an extensive written record that she had kept, then reading relevant case law as well as legislative history, and ultimately culminating in writing the brief. It sets forth my strongest argument, based on the facts and the law, for why my client should receive administrative relief.

My letters of recommendation are from Professors Adam Cox, Christine Gottlieb, and Anna Arons. After taking his class during my 1L year, I was a Teaching Assistant for Professor Cox in Legislation and the Regulatory State last spring. In that role, I prepared practice problems and led review sessions for students, helping them work through material in the course. Next, Professor Gottlieb was my supervisor in the Family Defense Clinic, an intensive full-year clinic through which I represented multiple clients, wrote four motions, and appeared regularly in court. Professor Gottlieb supervised my most difficult case, a *res ipsa loquitor* child abuse case that we successfully defended to reach a very favorable settlement, ultimately bringing my client's three children home. Finally, Professor Arons is the director of impact litigation for the Family Defense Clinic and supervised my work on the expungement case, including the development of the brief that is attached as my writing sample.

Thank you for your consideration.

Respectfully,

Amelia Y. Goldberg

AMELIA YASMIN GOLDBERG

2741 Arlington Avenue • Bronx, NY, 10463 • ayg237@nyu.edu • (917) 991 8635

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
Candidate for J.D., May 2024. GPA 3.9
Honors: Butler Scholar – one of ten students with the top cumulative grades after four semesters.
Pomeroy Scholar – one of ten students with the top cumulative grades from the first year.
Activities: Teaching Assistant, Legislation and the Regulatory State, Professor Cox
Initiative for Community Power, Spring and Summer Fellow
Research Assistant, Professor Richard Brooks, Summer 2022
Review of Law and Social Change, Staff Editor
Ending the Prison Industrial Complex, tutoring program for formerly incarcerated students, Chair
OUTLaw, member and mentor
Summer Power Building Retreat for Law and Political Economy, August 2022

HARVARD UNIVERSITY, Boston, MA
B.A. in Social Studies, *summa cum laude*, May 2019. GPA: 3.97
Senior Thesis: *Between Kin, Ship, and Shore: The Intersection of Feminism and Environmentalism aboard a Hudson River Sailboat*
Honors: *Phi Beta Kappa* Junior 24 – one of 24 students with top academic performance in junior year.
American Anthropological Association Sylvia Forman Prize in feminist anthropology, 2019
Best Manuscript Prize, The Harvard Undergraduate Research Journal, Spring 2018
Harvard College Scholar, 2017; John Harvard Scholar, 2016; Detur Book Prize, 2016
Activities: Our Harvard Can Do Better, Lead Organizer
Language: Intermediate Spanish

EXPERIENCE

FORTHCOMING: Summer legal fellow, Vladeck, Raskin & Clark, July – August 2022

FAMILY JUSTICE LAW CENTER, New York City, NY
Intern, May 2023 – Present
Identifying potential plaintiffs for class action advancing civil rights of parents and families. Wrote memo analyzing likelihood of conflict of interest finding in potential plaintiff class of parents on behalf of themselves and their children.

BROOKLYN DEFENDER SERVICES, New York City, NY
Clinic Participant, Family Defense Practice, September 2022 – May 2023
Represented three clients in *res ipsa loquitor* physical abuse case, expungement case, and neglect trial. Prepared for two fact-finding hearings by analyzing medical records, identifying medical expert witness, planning objections to opposing evidence, and drafting cross-examinations. Wrote order to show cause for unsupervised visits; reply papers defending visits on appeal; expungement brief; and *motion in limine* to exclude evidence. Represented clients at three settlement conferences, a permanency hearing, and two settlement hearings. Conducted cross-examination that won limited unsupervised visits.

MAKE THE ROAD NEW JERSEY, Elizabeth, NJ
Peggy Browning Labor Law Fellow, May – August 2022
Conducted legal research and advocacy for a Temporary Workers' Bill of Rights. Wrote several memos defending bill language. Drafted amendments that became part of enacted law. Communicated between organizers, Senate staff, and coalition members in English and Spanish. Met with Amazon workers during early organizing efforts and wrote report analyzing potential litigation, organizing, and legislative strategies for workers. Assisted with T-Visa immigration case.

ALYSE GALVIN FOR CONGRESS, Anchorage, AK
Deputy Finance Director, April – December 2020
Raised over $1 million in 6 months from high-dollar donors and members of Congress in $7 million total Independent campaign for AK-AL. Managed text, digital, and PAC fundraising programs as well as Alaskan political outreach. Remotely hired and supervised finance assistant, 3 part-time fellows, and 5 interns, the most racially diverse team on the campaign.

ROGER MISSO FOR CONGRESS, Syracuse, NY
Finance Director, January – March 2020; *formerly* ***Deputy Finance Director,*** September – December 2019
Oversaw fundraising for candidate in NY-24 Democratic primary, raising over $200,000 without accepting funds from corporate PACs, oil and gas, or health insurers. Developed field, policy, and political programs for the campaign.

Name: **Amelia Y Goldberg**
Print Date: **06/07/2023**
Student ID: **N17619373**
Institution ID: **002785**
Page: **1 of 1**

New York University
Beginning of School of Law Record

Fall 2021

School of Law
Juris Doctor
Major: Law

Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Tyler Rose Clemons			
Torts		LAW-LW 11275	4.0	A-
Instructor:	Mark A Geistfeld			
Procedure		LAW-LW 11650	5.0	A
Instructor:	Helen Hershkoff			
Contracts		LAW-LW 11672	4.0	A
Instructor:	Richard Rexford Wayne Brooks			
1L Reading Group		LAW-LW 12339	0.0	IP
Instructor:	Cynthia L Estlund			

	AHRS	EHRS
Current	15.5	15.5
Cumulative	15.5	15.5

Spring 2022

School of Law
Juris Doctor
Major: Law

Constitutional Law		LAW-LW 10598	4.0	A
Instructor:	Melissa E Murray			
Lawyering (Year)		LAW-LW 10687	2.5	CR
Instructor:	Tyler Rose Clemons			
Legislation and the Regulatory State		LAW-LW 10925	4.0	A
Instructor:	Adam B Cox			
Criminal Law		LAW-LW 11147	4.0	A
Instructor:	Ekow Nyansa Yankah			
1L Reading Group		LAW-LW 12339	0.0	CR
Instructor:	Catherine M Sharkey			

	AHRS	EHRS
Current	14.5	14.5
Cumulative	30.0	30.0

Pomeroy Scholar-Top Ten Students in the first year class

Fall 2022

School of Law
Juris Doctor
Major: Law

The Law of Democracy		LAW-LW 10170	4.0	A-
Instructor:	Samuel Issacharoff Richard H Pildes			
Comp Constitutional Law		LAW-LW 10221	2.0	B+
Instructor:	Tarunabh Khaitan			
Family Defense Clinic Seminar		LAW-LW 10251	4.0	A
Instructor:	Christine E Gottlieb Nila Amanda Natarajan			
Family Defense Clinic		LAW-LW 11540	3.0	A-
Instructor:	Christine E Gottlieb Nila Amanda Natarajan			

	AHRS	EHRS
Current	13.0	13.0
Cumulative	43.0	43.0

Spring 2023

School of Law
Juris Doctor
Major: Law

Family Defense Clinic Seminar		LAW-LW 10251	4.0	A
Instructor:	Christine E Gottlieb Nila Amanda Natarajan			
Employment Law		LAW-LW 10259	4.0	A
Instructor:	Cynthia L Estlund			
Family Defense Clinic		LAW-LW 11540	3.0	A
Instructor:	Christine E Gottlieb Nila Amanda Natarajan			
Labor Law		LAW-LW 11933	3.0	A
Instructor:	Wilma Beth Liebman			
Directed Research Option B		LAW-LW 12638	1.0	A
Instructor:	Adam B Cox			

	AHRS	EHRS
Current	15.0	15.0
Cumulative	58.0	58.0

Butler Scholar - Top Ten Students in the Class after four semesters
Staff Editor - Review of Law & Social Change 2022-2023

End of School of Law Record

TRANSCRIPT ADDENDUM FOR NYU SCHOOL OF LAW
JD CLASS OF 2023 AND LATER & LLM STUDENTS

I certify that this is a true and accurate representation of my NYU School of Law transcript.

Grading Guidelines

Grading guidelines for JD and LLM students were adopted by the faculty effective fall 2008. These guidelines represented the faculty's collective judgment that ordinarily the distribution of grades in any course will be within the limits suggested. An A + grade was also added.

Effective fall 2020, the first-year J.D. grading curve has been amended to remove the previous requirement of a mandatory percentage of B minus grades. B minus grades are now permitted in the J.D. first year at 0-8% but are no longer required. This change in the grading curve was proposed by the SBA and then endorsed by the Executive Committee and adopted by the faculty. Grades for JD and LLM students in upper-level courses continue to be governed by a discretionary curve in which B minus grades are permitted at 4-11% (target 7-8%).

First-Year JD (Mandatory)	**All other JD and LLM (Non-Mandatory)**
A+: 0-2% (target = 1%) (see note 1 below)	A+: 0-2% (target = 1%) (see note 1 below)
A: 7-13% (target = 10%)	A: 7-13% (target = 10%)
A-: 16-24% (target = 20%)	A-: 16-24% (target = 20%)
Maximum for A tier = 31%	***Maximum for A tier = 31%***
B+: 22-30% (target = 26%)	B+: 22-30% (target = 26%)
Maximum grades above B = 57%	***Maximum grades above B = 57%***
B: remainder	B: remainder
B-: 0-8%*	B-: 4-11% (target = 7-8%)
C/D/F: 0-5%	C/D/F: 0-5%

The guidelines for first-year JD courses are mandatory and binding on faculty members; again noting that a mandatory percentage of B minus grades are no longer required. In addition, the guidelines with respect to the A+ grade are mandatory in all courses. In all other cases, the guidelines are only advisory.

With the exception of the A+ rules, the guidelines do not apply at all to seminar courses, defined for this purpose to mean any course in which there are fewer than 28 students.

In classes in which credit/fail grades are permitted, these percentages should be calculated only using students taking the course for a letter grade. If there are fewer than 28 students taking the course for a letter grade, the guidelines do not apply.

Important Notes

1. The cap on the A+ grade is mandatory for all courses. However, at least one A+ can be awarded in any course. These rules apply even in courses, such as seminars, where fewer than 28 students are enrolled.
2. The percentages above are based on the number of individual grades given – not a raw percentage of the total number of students in the class.
3. Normal statistical rounding rules apply for all purposes, so that percentages will be rounded up if they are above .5, and down if they are .5 or below. This means that, for example, in a typical first-year class of 89 students, 2 A+ grades could be awarded.
4. As of fall 2020, there is no mandatory percentage of B minus grades for first-year classes.

NYU School of Law does not rank students and does not maintain records of cumulative averages for its students. For the specific purpose of awarding scholastic honors, however, unofficial cumulative averages are calculated by the Office of Records and Registration. The Office is specifically precluded by faculty rule from publishing averages and no record will appear upon any transcript issued. The Office of Records and Registration may not verify the results of a student's endeavor to define his or her own cumulative average or class rank to prospective employers.

Scholastic honors for JD candidates are as follows:

Pomeroy Scholar:	Top ten students in the class after two semesters
Butler Scholar:	Top ten students in the class after four semesters
Florence Allen Scholar:	Top 10% of the class after four semesters
Robert McKay Scholar:	Top 25% of the class after four semesters

Named scholar designations are not available to JD students who transferred to NYU School of Law in their second year, nor to LLM students.

Missing Grades

A transcript may be missing one or more grades for a variety of reasons, including: (1) the transcript was printed prior to a grade-submission deadline; (2) the student has made prior arrangements with the faculty member to submit work later than the end of the semester in which the course is given; and (3) late submission of a grade. Please note that an In Progress (IP) grade may denote the fact that the student is completing a long-term research project in conjunction with this class. NYU School of Law requires students to complete a Substantial Writing paper for the JD degree. Many students, under the supervision of their faculty member, spend more than one semester working on the paper. For students who have received permission to work on the paper beyond the semester in which the registration occurs, a grade of IP is noted to reflect that the paper is in progress. Employers desiring more information about a missing grade may contact the Office of Records & Registration (212-998-6040).

Class Profile

The admissions process is highly selective and seeks to enroll candidates of exceptional ability. The Committees on JD and Graduate Admissions make decisions after considering all the information in an application. There are no combination of grades and scores that assure admission or denial. For the JD Class entering in Fall 2021 (the most recent entering class), the 75th/25th percentiles for LSAT and GPA were 174/170 and 3.93/3.73.

Updated: 10/4/2021

Harvard University

Cambridge, Massachusetts 02138

Harvard College

Goldberg, Amelia Yasmin
Admitted in 2015
Good Academic Standing

Adams House
HUID: **40977694**

Degrees Awarded

Degree:	Bachelor of Arts
Date Conferred:	05/30/2019
Degree Honors:	Summa Cum Laude in Field
Degree Honors:	Recommended for Highest Honors

Academic Program

Concentration: Social Studies

Beginning of Harvard College Record

2015 Fall

Course	Description	Earned	Grade
FRSEMR 40L	Free Speech	4.000	SAT
HUMAN 10A	A Humanities Colloquium: From Homer to Descartes	4.000	A
LIFESCI 1A	An Integrated Introduction to the Life Sciences: Chemistry, Molecular Biology, and Cell Biology	4.000	A
SOCIOL 146	Death by Design: Health Inequalities in Global Perspective	4.000	A

2016 Spring

Course	Description	Earned	Grade
GOV 1207	Comparative Politics of the Middle East	4.000	A
HUMAN 10B	A Humanities Colloquium: From Shakespeare to Kieslowski	4.000	A
PHIL 8	Introduction to Early Modern Philosophy	4.000	A
STAT 104	Introduction to Quantitative Methods for Economics	4.000	A

Term Honor: John Harvard Scholar

2016 Summer

Course	Description	Earned	Grade
GOVT S-1711	Study/Freiburg: Privacy	4.000	A
HIST S-1240	Study/Freiburg: Eur/Challenges	4.000	A

2016 Fall

Course	Description	Earned	Grade
ECON 10A	Principles of Economics	4.000	A
ENGLISH 90WR	War and Its Representations	4.000	A
GOV 1141	Comparative Politics of Gender Inequality	4.000	A
SOC-STD 10A	Introduction to Social Studies	4.000	A

2017 Spring

Course	Description	Earned	Grade
ENGLISH 192	Political Theatre and the Structure of Drama	4.000	A
GOV 93A	How to Write About Politics: A Practicum	4.000	A
PHIL 17	Introduction to Feminist Political Philosophy	4.000	A-
SOC-STD 10B	Introduction to Social Studies	4.000	A

Term Honor: Harvard College Scholar

2017 Fall

Course	Description	Earned	Grade
ANTHRO 2920	Probing the Polity: Alternatives to the State	4.000	A
HDS 3060	Gender and Sexuality in the Muslim Middle East	4.000	A
SCIPHUNV 20	What is Life? From Quarks to Consciousness	4.000	A
SOC-STD 98LF	Globalization and the Nation State	4.000	A-

2018 Spring

Course	Description	Earned	Grade
FOLKMYTH 146	Body Burdens: Toxic Tales and Politics of Environmental Racism	4.000	A
SOC-STD 40	Philosophy and Methods of the Social Sciences	4.000	A
SOC-STD 98QD	Media, Power, and Resistance	4.000	A
SPANSH 40	Advanced Spanish Language I: Viewing the Hispanic World	4.000	A
US-WORLD 42	The Democracy Project	4.000	A

Term Honor: Junior Phi Beta Kappa

2018 Fall

Course	Description	Earned	Grade
ESPP 78	Environmental Politics	4.000	A
HISTSCI 186V	Technology and Gender	4.000	A
SOC-STD 99A	Tutorial - Senior Year	4.000	SAT
SPANSH 50	Advanced Spanish II: Creative Writing and Performance	4.000	A-

2019 Spring

Course	Description	Earned	Grade
AFRAMER 10	Introduction to African American Studies	4.000	A
ENGLISH 90KB	Poems of Seamus Heaney and Thomas Hardy	4.000	A
RELIGION 1095	Ritualization and Transitional Phenomena	4.000	A
SOC-STD 99B	Tutorial - Senior Year	4.000	SAT

Harvard College Career Totals

Cum GPA:	**3.968**	**Cum Totals**	**140.000**	**124.000**

End of Harvard College Record

Date Issued: Aug 10, 2019

Michael P. Burke, Registrar
Not official unless signed and sealed

New York University
A private university in the public service

School of Law

Family Defense Clinic
245 Sullivan Street, Fifth Floor
New York, New York 10012-1301
Telephone: (212) 998-6693
Facsimile: (212) 995-4031
E-mail: gottlieb@mercury.law.nyu.edu

Christine Gottlieb
Adjunct Professor of Clinical Law

June 12, 2023

RE: Amelia Goldberg, NYU Law '24

Your Honor:

I write to enthusiastically recommend Amelia Goldberg for a judicial clerkship.

Amelia was a student in the Family Defense Clinic, which I teach at NYU. The clinic is a year-long, 14-credit course, which has both seminar and fieldwork components. Students handle all aspects of representing parents in civil child abuse and neglect proceedings. In addition to twice weekly seminar meetings, I met with Amelia for supervision at least once a week (and sometimes several times a week) outside of class, and therefore got to know her work quite well.

Having been privileged to teach at NYU School of Law for over twenty years, I can say that Amelia has one of the keenest legal minds of all the students I've taught. Her legal analysis is top notch. She is able to parse case law with nuance and to unpack and explain complicated legal issues. In particular, I was struck by Amelia's ability to draw on principles raised in one course or area of law to address questions that arose in another. I wish more law students were as good at taking the initiative to connect underlying legal principles on their own without waiting for a teacher to draw the roadmap!

As a result of her ability to draw connections, make subtle distinctions, and articulate complex issues clearly, Amelia consistently raised the level of discussion in our seminar. Whatever the topic, her comments were unfailingly thoughtful and pressed her fellow students to go deeper in their understanding of law and policy. She was always prepared—not only to discuss the readings, but to follow the conversation wherever it went and offer original insights. She was able to argue strenuously for her positions in a manner that was constructive and respectful.

Amelia's field work was also very strong. On one case, Amelia represented a client who was charged civilly with child abuse based on a res ipsa theory when her young child suffered unexplained bone injuries. Amelia's many talents came to the fore in her handling of this case. She demonstrated her compassion and commitment to client-centered lawyering by building a strong relationship with the client and counseling her through complicated decisions about possible settlements. Amelia also marshalled the strongest possible

arguments on both the legal and factual aspects of the case. She grasped the complicated res ipsa rule that governs civil child protective matters in New York and also became an expert in the medical issues in question, including learning the details of bone diseases that might explain the injuries.

Along the path of that case, Amelia and her partner drafted two very persuasive motions and Amelia conducted an effective cross examination of a case worker. When the team won unsupervised visits for the client with her child, Amelia helped draft reply papers on a short time frame to successful defend against a stay application. By the end of a year of strenuous effort by Amelia and her teammate, children's services agreed that the children should be reunified with our client—a rare victory for such cases in Family Court.

Furthermore, Amelia went the extra yard to volunteer to take on responsibility for a case beyond the two required of all clinic students (most of the students elect to stay with the required number). In that matter, Amelia worked carefully through an extensive record and wrote a comprehensive letter brief on behalf of the client, arguing that her record in the state register of child abuse and maltreatment should be expunged.

Throughout the year, Amelia worked hard, responded well to constructive feedback, and paid attention to detail. I know from conversations with other attorneys who have supervised her that they have been equally impressed with Amelia.

In short, Amelia's work has stood out as exemplary. I believe she would make an excellent law clerk.

I would be happy to provide additional information if that would be helpful. I may be reached on my cell phone at 718-374-1364.

Sincerely,

/s/

Christine Gottlieb

NYU LAW

ANNA ARONS
Acting Assistant Professor
Lawyering Program

Impact Project Director
Family Defense Clinic

NYU School of Law
245 Sullivan Street, C24
New York, NY 10012-1301
P: 212 992 6152
M: 530 574 6790
anna.arons@nyu.edu

May 31, 2023

RE: Amelia Goldberg, NYU Law '24

Your Honor:

I write to recommend Amelia Goldberg for a clerkship in your chambers. I have worked closely with Amelia over the last year in my capacity as the Impact Project Director of NYU's Family Defense Clinic, supervising her on a project that has required substantial legal research and writing, mastery of an extensive factual record, complicated strategic decision-making, and the development of a trusting relationship with a client. Amelia shone in each of these areas—and showed herself to be an empathetic and generous colleague, to boot. I am confident that she would bring these same outstanding qualities to a clerkship and I recommend her without reservation.

The NYU Family Defense Clinic represents parents facing child welfare cases. The overwhelming majority of families affected by the child welfare system in New York City are poor and Black or Latinx, and the Clinic works through both direct representation and systemic advocacy to combat the indignity and inequality routinely experienced by these parents. All clinic students represent individual clients in direct-representation cases in family court, itself a time- and emotionally-intensive undertaking. In addition to this work, students may also volunteer for additional projects, such as representing parents in administrative proceedings to modify records of child abuse or neglect from New York State's Central Register. In all aspects of this work, the Clinic seeks to empower students to take the lead on their cases.

In Fall 2022, just a few weeks into the semester, Amelia volunteered for an additional project, under my supervision, on top of her primary casework. Her work on this project spanned from Fall 2022 to Spring 2023, and we met for supervision approximately every other week and emailed frequently in between. Her project was a bit unusual, in that the Clinic was seeking to fully expunge a record of an unsubstantiated report of child neglect. While New York State has a clear and commonly used administrative procedure for the *amending and sealing* of records of child neglect in cases where the report was substantiated, the process for *expunging* records is far more discretionary, far more opaque, and far less commonly used.

Thus, Amelia needed to conduct extensive research to understand not only the legal meaning of notoriously vague terms like "neglect" and "inadequate supervision" but also what (if any) legal standard might be applied to our application for expungement and what sorts of evidence would be considered. Her research was exhaustive, as she delved into caselaw,

administrative decisions, and even legislative history. Her dive into legislative history was particularly impressive; at the outset, I told her that I was pessimistic about the odds of her finding anything useful, but I was delighted to be proven wrong, as she came back with pages of material shedding light on the legislative purpose of retaining unsubstantiated reports on the register and the related purpose of allowing the expungement of some of those reports.

Alongside this extensive legal research, Amelia also needed to familiarize herself with an extensive factual record. The client for the expungement case was a meticulous record-keeper—which was, of course, fortunate, but also meant that Amelia had hundreds of pages of medical and school records, email correspondence, text messages, and photos to dig through and synthesize. By the end of the fall semester, she had carefully organized and digested the records and showed a remarkable facility with the many facts and moving pieces. At the same time that she was conducting legal and factual research, Amelia also developed a productive and trusting relationship with our client, consistently showing care and compassion toward the client while carefully explaining complicated legal matters and giving our client the information she needed to make decisions about her own case.

Pulling all of this together, Amelia spent the spring semester drafting an impressive 15-page letter brief arguing for expungement. In her writing, Amelia succinctly and persuasively summarized the relevant caselaw, and advanced clear and credible arguments grounded in her careful understanding of the relevant authority and the factual record. All the while, she showed great instincts for triaging arguments and retaining her credibility.

Throughout the semester, Amelia demonstrated a remarkable receptiveness to feedback and enthusiasm for improving her own skills. Indeed, on more than one occasion, even as she waited on feedback from me, she continued to improve and revise the letter-brief on her own initiative. More broadly, she never struck me as passive in her learning; rather, she commonly displayed an all-important—but often difficult—skill of asking questions. This extended beyond just writing. Much of our time in supervision was devoted to discussing complicated questions about the lawyer-client relationship, ethical obligations, and the difficult balance between strategies most likely to achieve a positive outcome for a client and strategies that give voice to all of the client's concerns.

As I am sure this letter makes clear, I found Amelia a delight to supervise—or perhaps more accurately, to work alongside. She is enthusiastic, conscientious, and kind, not to mention fully dedicated to all that she takes on. I should mention, too, that Amelia initially took on this project with another student, but when the other student took a medical leave, Amelia gracefully and without complaint stepped up to shoulder the project on her own. Even when juggling extra responsibilities and stressors in and out of law school, Amelia maintained a sense of perspective and balance, not to mention a wry sense of humor. I have no doubt that she would bring this same thoughtful, good-humored approach to her clerkship and that she would make the term a genuine pleasure. I am excited to see her continue to develop her legal skills and critical thinking through a clerkship and have no doubt she will make use of all she has learned to be an excellent and thoughtful lawyer.

If you have any questions or would like any additional information, I am more than happy to talk further. I can be reached on my cell phone at 530-574-6790 or, until July 1, by email at anna.arons@nyu.edu. Following that date, I will be joining the faculty at St. John's University School of Law, but I remain available to provide additional information and can be reached then at aronsa@stjohns.edu.

Sincerely,

Anna Arons

ADAM B. COX
Robert A. Kindler Professor of Law

New York University School of Law
40 Washington Square South, 509
New York, NY 10012-1099
212 992 8875
adambcox@nyu.edu

June 7, 2023

Dear Judge:

I write to strongly recommend Amelia Goldberg for a clerkship in your chambers.

By way of background, I am a professor of law at NYU School of Law, where I teach and write about immigration law, constitutional law, and administrative law, among other subjects. Before joining NYU's faculty I taught at the University of Chicago Law School.

Amelia is one of the strongest students I've taught in the last five years at NYU. I first got to know her when she was a student in my section of Legislation and the Regulatory State (LRS), a required first-year course that introduces students to administrative law and statutory interpretation. She wrote one of five strongest exams in the class. Her exam performance was no surprise to me, given what I'd seen from her during the term. She stood out in classroom conversations and in office hours as uncommonly astute, inquisitive, and thoughtful. She was clearly a close reader of cases, quickly mastered complicated doctrinal topics, and was extremely perceptive about the political and historical contexts within which the cases we were reading had been decided.

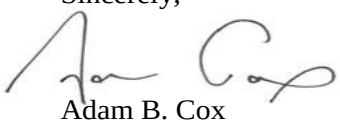
Given her performance in LRS, as well as my sense that Amelia would work well in a small group and be a great teacher, I invited her to work this spring as one of three teaching assistants for my LRS course. In that role she produced practice problems and review materials, led two review sessions, and held regular office hours with the other two teaching assistants. Students raved about how helpful she and the other two teaching assistants were this spring. Indeed, I can't recall ever having as many students stop by my office or email me to say how amazing they thought the teaching assistants had been. As their supervisor, I was equally impressed. The practice problems Amelia produced for her review sessions were, frankly, better than similar ones that I had produced in previous years. And when I had a family emergency crop up in the middle of the term, Amelia and her co-TAs generously stepped in. They helped prepare materials (and me!) for a review session that I was supposed to run and even coordinated with the entire class to solve some challenging scheduling issues.

All of these experiences drove home for me that Amelia is not only a stellar student—though she is surely that. She is also a kind, thoughtful, collaborative person who would be a wonderful addition to the intimate work environment in chambers. I could go on: I could

write more than I already have about her tremendous commitment to public service, for example, which infuses everything she does. But mostly I want to urge you to give her your strongest consideration.

Please let me know if there is any additional information I can provide about Amelia. You can reach me at my office or on my mobile at (917) 407-8282.

Sincerely,



Adam B. Cox

AMELIA YASMIN GOLDBERG

2741 Arlington Avenue • Bronx, NY, 10463 • ayg237@nyu.edu • (917) 991 8635

Dear Judge,

Attached is a writing sample I produced as a student in NYU's Family Defense Clinic. The clinic is an intensive, full-year opportunity to represent parents who are facing allegations of child abuse or neglect in family court. In addition to my regular clinic assignments, I volunteered to represent a mother who was the subject of an unsubstantiated report of child neglect. New York maintains records of all reports of child abuse or neglect in its State Central Register, even when they are unsubstantiated. I wrote the attached brief to seek the expungement of my client's record in that database. In addition to my own legal research, the brief is a product of many interviews with my client and the review of a significant written record.

I worked with a clinic colleague as well as my supervisor, Professor Anna Arons, during the early stage of this case. However, my clinic colleague took a medical leave before we began writing the brief, leading me to take full responsibility for legal research, drafting, and editing. Professor Arons met with me regularly while I worked on the brief and gave me feedback on several drafts. However, the finished product below is in my own words.

I have changed all names in the brief to preserve my client's confidentiality. The Family Defense Clinic has given me permission to share this anonymized brief with you as a writing sample.

Thank you for your consideration,

Amelia Y. Goldberg

AMELIA YASMIN GOLDBERG
2741 Arlington Avenue • Bronx, NY, 10463 • ayg237@nyu.edu • (917) 991 8635

AMELIA YASMIN GOLDBERG
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I. PRELIMINARY STATEMENT

Ms. Smith is the subject of an unsubstantiated report in the State Central Register ("SCR") for medical neglect and inadequate guardianship regarding Hannah Green-Smith **(Case Number Omitted)**. The report was made on May 30, 2022, and concerns Hannah's alleged behavioral problems at preschool. As detailed below, prior to any report being made, Ms. Smith had already exercised more than adequate care by promptly having Hannah's mental health assessed by four separate medical experts. Reports from the four experts concluded that Hannah's behavior was transitional and developmentally normal.

Ms. Smith now seeks the expungement of the record of created by this report. The Social Services Law provides for expungement of a report on clear and convincing evidence that the subject child was not neglected. N.Y. SOC. SERV. LAW § 422(5)(c) (McKinney 2023). Here, clear and convincing evidence affirmatively refutes the allegation of medical neglect in two ways: first, it shows that Hannah was never seriously harmed or at risk of such harm; and second, it shows that there was no neglectful act or omission because Hannah consistently received thorough medical care from Ms. Smith. The report of inadequate guardianship was also baseless because even if true, Ms. Smith's alleged inability to control Hannah's behavior at school did not amount to neglect. Furthermore, the record supports expungement because the report was likely made in bad faith. Therefore, Ms. Smith respectfully requests expungement of these unsubstantiated reports from the SCR.

II. FACTUAL AND PROCEDURAL BACKGROUND

As detailed below, Ms. Smith was the subject of two reports of child neglect, both made by individuals associated with her daughter Hannah's new preschool. These reports were made after Ms. Smith and her husband had already sought extensive care for Hannah; after four medical

AMELIA YASMIN GOLDBERG
2741 Arlington Avenue • Bronx, NY, 10463 • ayg237@nyu.edu • (917) 991 8635

professionals had each concluded that Hannah was a developing normally and did not need specialized services, a paraprofessional, or psychological intervention; and shortly after Ms. Smith had reported Hannah's preschool—the apparent source of these reports—to the New York City Department of Education ("DOE") for concerns related to its treatment of Hannah. The Administration for Children's Services ("ACS") quickly determined the reports to be unsubstantiated.

II.A. Factual history

Prior to her enrollment in Berkeley Preschool ("Berkeley"), Hannah had always been deemed a well child. Her parents brought her to all of her check-ups and ensured she was fully vaccinated, and her pediatrician consistently noted that she exhibited "appropriate growth and development." Pediatric Record at 2-5, 38, 26, 23, 16, *attached as* Exhibit A (noting Hannah's development during well visits at ages 2, 3, 4, and 5). At four months old, she began daycare at Go Kids, and later she attended City Preschool, with only minor issues. Exhibit A at 36 (attending daycare with "some bad behavior"); March 17, 2021 Child Pediatrics Evaluation at 1, *attached as* Exhibit B ("behavior was less 'problematic'"). By October 2021, at age four, Hannah had attained an independent reading level and was described by her teacher as a "smart girl who knows all her letters, shapes, colors, & numbers." Oct. 21, 2021 Reading Assessment at 6, *attached as* Exhibit C; Nov. 5, 2021 assessment, *attached as* Exhibit D. She had never been recommended for an Individual Education Plan (IEP). ACS Case Notes at 18, *attached as* Exhibit E.

In February 2022, Hannah started 3-K at Berkeley. An orthodox Jewish preschool, Berkeley was a substantially different environment from her previous secular daycare. WhatsApp Message History with Class Phone at 1 (describing weekly classroom Shabbat), 4 (discussing Hannah's Hebrew name), 7 (singing in Hebrew), *attached as* Exhibit F. Hannah was the only non-

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white and the only secular student in her classroom. Emails with Department of Education at 4, *attached as* Exhibit G. Despite this challenging adjustment, Berkeley staff initially reported that Hannah was doing well. WhatsApp Message History with Berkeley Administrator at 1 ("[Hannah] is adjusting nicely," "[Hannah] is certainly learning her surroundings and it is an adjustment"), *attached* as Exhibit H; Exhibit F at 1 ("Hannah is awesome!! She is learning our classroom routines").

Unfortunately, Berkeley staff soon began reporting to Ms. Smith that they were having trouble managing Hannah's behavior and asking for extra assistance in the classroom. Exhibit F at 4; Exhibit H at 3. Staff described Hannah laughing uncontrollably, touching her friends, saying bathroom words, and having difficulty taking turns. Exhibit F at 5-6; Letter from Berkeley, *attached as* Exhibit I. The school asked Ms. Smith to seek additional help for Hannah in the classroom, suggesting a preschool IEP, a nonprofit program for special needs children, or psychological evaluation as potential avenues for assistance. Exhibit H at 3 ("Insurance will not hand out a para unless there's a diagnosis . . . I could send you, obviously, to a psychologist . . . if they feel like she needed the service they'll write something up for her"), 4-6 (discussions of potential resources); Exhibit A at 20-21 ("School recommended psych evaluation, and would like her to have a paraprofessional").

Ms. Smith immediately took the school's concerns seriously. Exhibit H at 3 ("I really appreciate you folks flagging this . . . It is an issue that needs to be addressed"). With the school's agreement, and hoping not to limit Hannah's future educational opportunities, she opted to pursue psychological assessment rather than an IEP. Exhibit H at 3. The week after the school first raised concerns, Ms. Smith requested a psychiatric referral from Hannah's pediatrician. Exhibit A at 20-21 ("Mom tried calling psych clinics, however can't get an appointment for a year. Referral placed

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for psych"). She also contacted an occupational therapist that Berkeley recommended, who unfortunately could not accept additional patients. Text Message History with Occupational Therapist, *attached as* Exhibit J. Ms. Smith and her husband, Mr. Green, both completed substantial outreach in search of a child psychiatrist who would take their insurance, contacting nearly 50 doctors. Exhibit H at 4; Emails Seeking Doctors, *attached as* Exhibit K.

Even with the difficulty of finding a doctor on such short notice, Ms. Smith and Mr. Green promptly provided Hannah with thorough medical care. Within a week of Berkeley raising concerns, Ms. Smith arranged for Hannah to see a psychoanalyst, Dr. Robin Williams. Emails with Berkeley at 1, *attached as* Exhibit L. Then, on March 16, 2022, Ms. Smith brough Hannah in for an appointment with her pediatrician, Dr. Karen Wilkerson. Exhibit A at 19. The following day, Mr. Green took Hannah to be evaluated by a pediatric neurologist, Dr. Chuan Zhu. March 17, 2022, Child Pediatrics Appointment Note, *attached as* Exhibit M. A week later, on March 23, Hannah was seen at Helping Hands Pediatric Occupational Therapy. March 23, 2022, Helping Hands Pediatric Occupational Therapy Appointment Note, *attached as* Exhibit N. Ms. Smith also worked to provide additional psychological care for her daughter. June 7, 2022, Email Log of Calls to Psychiatrists, *attached as* Exhibit O. By June, Ms. Smith had enrolled Hannah in therapy. Exhibit E at 37; June 8, 2022 Email Confirmation with New Behavior Therapy, *attached as* Exhibit P.

Throughout these medical assessments, providers agreed that Hannah was perfectly well and was merely experiencing difficulties transitioning to the new school. The pediatrician, Dr. Wilkerson, concluded that "[Hannah's] actions at school are likely behavioral," added that a psychiatric referral would only be necessary if the problems worsened, and cleared Hannah to return to school. Exhibit A at 19. Ms. Smith reported to Berkeley staff that per this assessment,

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Hannah's actions were "perfectly average, especially in the current pandemic circumstances." Exhibit H at 9. Dr. Wilkerson referred Hannah to be assessed for signs of an adjustment disorder, "just to be sure," marking this referral as "preventive health management." July 17, 2022 Email to CPS Worker at 2, *attached as* Exhibit Q; Exhibit A at 19; March 16, 2022 Referral for Pediatric Outpatient Occupational Therapy, *attached as* Exhibit R. On April 20, 2022, just over a month after the initial concerns were raised by Berkeley, Dr. Wilkerson once again gave Hannah a clean bill of health, noting her appropriate growth and development. Exhibit A at 16-17.

Similarly, Dr. Zhu's found that Hannah was cooperative, related well, and was "friendly, very verbal; no aggressive behaviors; easily engaged." Exhibit B at 2. Concurring with Dr. Wilkerson, Dr. Zhu concluded that Hannah was developmentally normal for her age in all areas, including personal and social development. *Id; see* Exhibit A at 19. He also explained to Hannah's parents that her behavior was normal given her age and the circumstances, and could be corrected by her parents and teachers without additional assistance. Exhibit H at 9. While Dr. Zhu diagnosed Hannah with an adjustment disorder, he did not prescribe medications, a paraprofessional, or other classroom assistance. Exhibit B. Instead, he recommended Hannah's parents and teachers engage in behavioral modification to help her follow instructions and build awareness of social cues. *Id.* Following this recommendation, Ms. Smith engaged in behavioral modification at home, including having conversations with Hannah about how to treat others. Exhibit H at 10; Exhibit F at 8.

The psychoanalyst and occupational therapist also concurred that Hannah was a well, normally developed child. Unfortunately, when asked for a written assessment, the occupational therapist provided an assessment for a different child and has not been able to provide Hannah's report. May 6 Emails with Helping Hands Pediatric Occupational Therapy, *attached as* Exhibit S; May 25, 2022 Insurance Complaint, *attached as* Exhibit E (complaint to insurance for services not

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rendered); Exhibit Q at 2; Exhibit E at 21.[1] However, as memorialized by Mr. Green, the occupational therapist did not recommend a paraprofessional or any other intervention at school. Exhibit H at 10. Instead, she thought that Hannah could benefit from a writing workshop and assistance with her balance – interventions not related to the behavior Hannah exhibited at school – and recommended that Hannah's parents work with the school on "setting rules for Hannah for what is acceptable and not." *Id*.; Exhibit K at 21. Similarly, Dr. Williams did not think that Hannah needed treatment and considered it possible that she was acting out due to not being challenged enough in the classroom. Exhibit L at 1.[2]

Finally, two social service professionals who observed Hannah at school described her behaviors as falling within a developmentally normal range. First, the DOE investigator noted that some of Hannah's behaviors were "typical for a 5yr old." Exhibit E at 22. Subsequently, Child Protective Specialist ("CPS") Sharon Tyler also observed Hannah at school and at home, and concluded, "[b]ased on CPS observation . . . Hannah seems to be developmentally on target." Exhibit E at 18.

Throughout Hannah's appointments, Ms. Smith had consistently kept Berkeley staff updated about Hannah's medical care. *See generally* Exhibit L (emailing updates following medical appointments). Subsequent to Dr. Zhu's recommendation that Hannah's behaviors would best be addressed by staff at the preschool, where they occurred, Ms. Smith requested that Berkeley staff work with Hannah on behavioral modification. Exhibit H at 9; Exhibit B. In response, however, Berkeley staff contested the neurological evaluation – the same evaluation they had

[1] The report that was provided to Ms. Smith is attached, with confidential patient information redacted. The child described in that report is a three-year-old brought in by their mother, whereas Hannah was four at the time and was brought in by her father. Helping Hands Pediatric Occupational Therapy Daily Note, dated May 5, 2022, *attached as* Exhibit U (mother provided patient history); Exhibit N (Hannah was brought to the appointment by Mr. Green). The therapist has not yet provided a correct report to Ms. Smith or her attorneys. *See* Emails with Attorneys, *attached as* Exhibit V.

[2] Ms. Smith requested a written report from this appointment, but Dr. Williams declined to provide one.

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themselves requested, less than a month earlier – insisting that their teachers were very skilled but that "[w]e need somebody from the outside to step in." Exhibit H at 3, 11. Although none of Hannah's doctors had recommended a paraprofessional, Berkeley suggested that she might be expelled if her parents did not secure such assistance. Exhibit G at 7.

At the same time, Ms. Smith became concerned about how Berkeley staff were treating Hannah, who often came home injured or bruised. Exhibit F at 7; WhatsApp Group Message History, Hannah's Parents and Berkeley Teachers at 4, 6, 7, *attached as* Exhibit W; Exhibit G at 1-2. Hannah would later report that teachers squeezed and pinched her face as punishment, and she became afraid to go to school. Photos of Hannah, *attached as* Exhibit X; Exhibit G at 4; June 9, 2022 Email to DOE Investigators, *attached as* Exhibit Y.

On March 25, Ms. Smith filed a report explaining these concerns with the DOE. Exhibit G at 6-7. The DOE opened an investigation, during which investigators documented that Hannah's teachers were using inappropriate strategies such as removing Hannah from the classroom to address her behavior. *Id.* at 3 ("we are working with the teaching staff to use more effective strategies that do not involve separating Hannah from her peers"). The investigation also led to increased tensions between Ms. Smith and Berkeley staff. Exhibit L at 1 (Berkeley staff stating that "lengthy emails can continue after yours and our trust is reinstated"). At one point during the investigation, when Ms. Smith raised concerns about corporal punishment, Berkeley staff responded by stating that "Hannah shares with her and others in the school things that occur at home," which Ms. Smith took to imply that school staff would "make false accusations against me and my husband in retaliation" if she proceeded with her complaint. Exhibit G at 4.

Indeed, two weeks later, two people apparently connected with Berkeley made reports to the SCR alleging that Ms. Smith and Mr. Green had abused and neglected Hannah. The first, made

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on May 30, 2022, alleged that Ms. Smith failed to provide for Hannah's mental health needs and was unable to control her behavior. State Central Register Record, dated Aug. 16, 2022, at 4, *attached as* Exhibit Z. The source for this report described the same concerns about Hannah's behavior at school previously raised by Berkeley staff, but also added that Hannah had been making suicidal and homicidal statements, a concern never previously mentioned by school staff and notably absent from a letter the school had prepared detailing Hannah's behavior. Exhibit E at 2, 7-8; *see generally* Exhibit I. During an investigative visit to Berkeley, ACS Child Protective Specialist ("CPS") Sharon Tyler discussed these allegations with the source. Exhibit E at 2, 7-8. The source also conveyed information that only Berkeley staff would know, referencing the report that Ms. Smith had filed with the DOE as well as Berkeley policies for disciplining students. *Id.* at 8. Additionally, the source recounted certain steps taken by Berkeley staff, including recommending that Hannah's parents have her evaluated around March of 2022. *Id.* at 5-6; *compare* Exhibit H at 3.

Ultimately, Ms. Smith withdrew Hannah from Berkeley. Exhibit W at 8. The following day, an additional report was called in by a source also apparently associated with the school. This source related that she had seen Hannah every day until Hannah was withdrawn from preschool. She also stated that while it would not violate Berkeley's policy to make a report, "this report is being made by her independently of the school." Exhibit E at 32. In contradiction with the first source, this source noted that Ms. Smith did follow up on the recommended evaluations. *Id.* at 33. Instead, she alleged that Hannah's parents were treating her aggressively. When asked "if she ha[d] ever seen this or heard of it happening, she replied no." *Id.* at 32.

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II.B. Procedural history

ACS quickly determined all allegations to be unfounded. During her initial meeting with CPS Ms. Tyler, Ms. Smith immediately presented her with documentation of Hannah's medical care, causing CPS Tyler to note "**she has taken Hannah to several people and has not had one referral**." *Id.* at 20 (emphasis in original). CPS Tyler also contacted Dr. Wilkerson, the pediatrician, who confirmed that Hannah was healthy, fully vaccinated, and meeting developmental milestones. *Id.* at 28. By June 3, five days into the investigation, CPS Tyler concluded that Ms. Smith and Mr. Green's protective capacity was "moderate to high as they have provided proof that they have explored evaluating Hannah, as well as safety proofed the home to ensure she is unable to hurt herself." Exhibit E at 34. CPS Tyler also assessed that there was no "immediate or impending danger of serious harm" and that no safety plan or other intervention was needed. Exhibit Z at 5.

Ultimately, CPS determined that both the inadequate guardianship and medical neglect allegations were unfounded, and closed the case on July 26, 2022 with no services required. Exhibit Z at 7. In closing the case, the assigned CPS noted that the evidence did not support the allegations because while "there are some behavioral concerns for [Hannah]," "prior to the agency's involvement the BM [biological mother] had sought help for the child." *Id.* at 9.

III. ARGUMENT

III.A. Expungement is allowed on clear and convincing evidence that either refutes the allegation of harm to the child, or demonstrates that parents exercised adequate care.

The Office of Children and Family Services (OCFS) must seal any report not supported by a fair preponderance of the evidence. N.Y. SOC. SERV. LAW § 422(5)(a) (McKinney 2023). Further, OCFS may expunge a report where "the subject of the report presents clear and convincing

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evidence that affirmatively refutes the allegation of abuse or maltreatment; provided however, that the absence of a fair preponderance of the evidence supporting the allegation of abuse or maltreatment shall not be the sole basis to expunge the report." N.Y. SOC. SERV. LAW § 422(5)(c) (McKinney 2023). The distinction between sealing and expungement follows the weight of the evidence: a preponderance of the evidence against the report is sufficient to seal, whereas clear and convincing evidence is necessary to expunge.

Expunging records that have been refuted by clear and convincing evidence is consistent with the purpose of the SCR. Although the SCR originally preserved only indicated reports, in 1996, the Social Services Law was amended to provide for sealing rather than expungement of certain unsubstantiated reports. Raymond Hernandez, *Law to Ease Disclosures on Child Abuse*, N.Y. TIMES, Feb. 13, 1996. As the Senate memo in support of the amendment explained, by sealing rather than expunging records, the SCR would allow caseworkers to look more closely at subsequent reports in cases where there was some evidence of abuse but not enough to indicate the report. The Senate memo identified two circumstances in which an unsubstantiated report might conceal abuse: where a parent gives a plausible explanation for a child's injury but "a pattern of serious repeated injury to the child becomes evident" over time, and "cases where there is evidence that a child has suffered abuse or maltreatment, but because of the multitude of potential abusers, it becomes very difficult to identify the abuser." Senate Mem in Support, Bill Jacket, L 1996, ch 12 at 6. "The principal purpose of these [amendments] was to help child protective workers detect and investigate a 'pattern of abuse' revealed by unfounded reports . . . since an unfounded report . . . does not always indicate that a child has not been abused." *Matter of Mary L. v. State of N.Y. Dept. of Social Servs.* 676 N.Y.S.2d 704, 705 (3d Dept. 1998)

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By contrast, the need for closer scrutiny based on a previous unsubstantiated report does not extend to parents who demonstrate affirmatively that they never abused or neglected their child. N.Y. SOC. SERV. LAW § 422(5)(c) (McKinney 2023). Therefore, expungement is justified on clear and convincing evidence that refutes any element of the alleged abuse or maltreatment. Under the Family Court Act ("FCA"), parents may affirmatively show they did not neglect their child in two ways. First, a parent may show that the child did not suffer serious harm or the risk thereof. For instance, expungement was justified where a daycare employee left a child on the playground for several minutes but the child was unharmed. *Anne FF. v. New York State Off. of Child. & Fam. Servs*., 924 N.Y.S.2d 645, 646-7 (3d Dept 2011); *see also Gerald HH. v. Carrion*, 14 N.Y.S.3d 185, 187-88 (3d Dept. 2015) (amending indicated neglect record to unfounded and expunging after father presented evidence that he did not pick his son up by the neck and child bore no marks or injuries). Even where a parent leaves marks or bruises on their child, expungement may be justified if the harm was not serious. *Maurizio XX. v. New York State Off. of Child. & Fam. Servs.*, 3 N.Y.S.3d 782, 784-85 (3d Dept. 2015) (amending to unfounded and expunging indicated report of inadequate guardianship and excessive corporal punishment for spanking son in a bath, causing a bruise).

Second, a parent may affirmatively refute a report by showing that they were not at fault for whatever harm their child suffered. For instance, expungement of an inadequate guardianship report was granted based on genetic evidence that a toddler's tibia fracture could have resulted from an accidental fall combined with an underlying genetic disorder. *Gwen Y. v. New York State Off. Of Child. & Fam. Servs.*, 19 N.Y.S.3d 105, 107-08 (3d Dept. 2015). In that case, while the child clearly experienced harm in the form of a broken leg, the mother's evidence demonstrated that such impairment was not "the result of petitioner's failure to provide appropriate supervision

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and guardianship." *Id.* at 1092. Similarly, expungement is appropriate where "insufficient evidence exists to support the conclusion that petitioner's actions fell below a minimum degree of care" in supervising their child, even though the child was injured. *See Matthew WW. V. Johnson*, 799 N.Y.S.2d 594, 596 (3d Dept. 2005) (amending to unfounded and expunging report of inadequate guardianship when father allowed 5-year-old daughter play unsupervised on a swing set in his neighbor's yard, although she fell off the swing and was injured); *Steven A. v. New York State Off. of Child. & Fam. Servs.*, 762 N.Y.S.2d 672, 673-74 (3d Dept. 2003) (amending to unfounded and expunging a record of inadequate guardianship where 12-year-old got ahold of his father's gun because father had exercised care after the incident by removing all ammunition from the house). Even where one child was "placed in immediate danger" during a domestic violence incident and another child "suffered emotional impairment," expungement of the mother's record was justified because "neither the danger nor the impairment were the consequence of [her] actions." *Elizabeth B. v. New York State Off. of Child. & Fam. Servs.*, 47 N.Y.S.3d 515, 519 (3d Dept. 2017).

Hence, expungement is justified when a parent shows by clear and convincing evidence that their child was never at risk of serious harm, or that they were not at fault for any such harm.

III.B. Ms. Smith's SCR record of medical neglect should be expunged because medical evidence clearly and convincingly shows that Hannah was never seriously harmed or at risk of such harm, and in fact consistently received thorough medical care based on expert assessments.

Clear and convincing evidence may refute a report of medical neglect record by showing either that the child's health was never at risk of serious harm, or that the parent provided adequate medical care. N.Y. FAM. CT. ACT § 1012(f)(i) (McKinney 2023). Here, medical experts consistently assessed that Hannah's behavior was developmentally normal for a child of her age

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and circumstances. In addition, Ms. Smith went above and beyond the degree of care required by the statute by securing medical assessments for Hannah and implementing doctor's orders. Therefore, expungement is doubly justified and should be granted in this case.

III.B.1. Clear and convincing evidence from four medical experts refutes the allegation that Hannah's behavior in school ever amounted to serious harm or a risk thereof.

A parent is responsible for medical neglect if, despite being made aware of a serious medical condition, they fail to seek or accept medical care for their child, and that failure places the child in imminent danger of becoming impaired. *Matter of Faridah W.*, 579 N.Y.S.2d 377, 378 (1st Dept. 1992). Thus, as with any claim of neglect under the FCA, medical neglect requires a threshold showing that the child has been harmed or placed at risk of harm. N.Y. FAM. CT. ACT § 1012(f)(i) (McKinney 2023). "This prerequisite to a finding of neglect ensures that the Family Court . . . will focus on serious harm or potential harm to the child." *Nicholson v. Scoppetta,* 820 N.E.2d 840, 845 (N.Y. 2004). Furthermore, while a child's behavior may provide evidence of serious medical harm, this mode of proof requires a particularly high showing under the Act: "'Impairment of emotional health' and 'impairment of mental or emotional condition' includes a state of *substantially diminished psychological or intellectual functioning* in relation to . . . acting out or misbehavior, including ungovernability or habitual truancy." N.Y. FAM. CT. ACT § 1012(h) (McKinney 2023) (emphasis added). Thus, the Act distinguishes plain misbehavior, which – even if it merits concern from parents – is common among children, from actionable behavioral concerns that indicate substantially diminished functioning and risk serious harm to a child.

In the present case, Hannah was never seriously harmed or at risk of harm within the meaning of the FCA. Rather, her behavior was always developmentally normally for a child of her

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age, without signs of diminished psychological functioning, much less a substantial diminution. Substantial psychological diminution means a substantial deviation from the norm of psychological development, such as a child experiencing hallucinations. *See Matter of Jaelin L.,* 5 N.Y.S.3d 246, 249 (2d Dept. 2015). Around the time that Berkeley raised concerns about Hannah's behavior, however, her pediatrician, a pediatric neurologist, and a psychoanalyst all assessed her as developmentally normal. Exhibit A at 19-20; Exhibit B; Exhibit L at 1. In addition to three doctors, a social worker from the DOE who observed Hannah at school and CPS Tyler, who observed her at school and home, both agreed that Hannah exhibited behaviors that were normal for a five-year-old and that she was "developmentally on target." Exhibit E at 22, 18.

Nor did medical experts evaluate Hannah to be at risk of a serious mental health condition; to the contrary, they thought her behaviors resulted from the difficult transition to a new school environment and would be temporary. Exhibit A at 18-19; Exhibit H at 9. Indeed, the only diagnosis Hannah received was an adjustment disorder relating to this transition. Exhibit B. While an adjustment disorder may be evidence of negative changes in a child's life, it is not alone a substantial psychological diminution. *See In re Isobella A.*, 25 N.Y.S.3d 465, 467 (4th Dept. 2016) (affirming finding of emotional neglect where child had adjustment disorder diagnosis but focusing on mother's effort to alienate child from her father and interfere with father's visitation). Here, unlike in *Isobella A.*, Hannah's adjustment disorder related to the transition to a new school, rather than other neglectful behavior by her parents. *See Id*. Further, although the first source also alleged that Hannah was making suicidal and homicidal statements, Berkeley staff had never previously mentioned such statements among the behaviors they reported to Hannah's parents or in the letter they prepared for her for diagnostic purposes, and these statements were never directly observed by CPS Tyler or the many experts who evaluated Hannah. Exhibit I; Exhibit E at 9.

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Instead, multiple medical experts concluded that Hannah that was continuing to develop normally. Exhibit A at 19 (Dr. Wilkerson describing Hannah's issues as "likely behavioral"); Exhibit B at 2 (Dr. Zhu describing Hannah was a "normally developed child"); Exhibit Z at 9 (CPS Tyler confirming that Hannah "was meeting her developmental milestones"). Thus, Hannah never experienced substantial diminution of psychological function.

Further, the case at hand is distinct from cases of substantial psychological diminution because Hannah did not need psychological treatment. One element of medical neglect is the refusal of medical care, meaning that a medical condition not requiring treatment cannot form the basis for neglect. N.Y. FAM. CT. ACT § 1012(f)(i) (McKinney 2023). "The statute defining a 'neglected child' does not require a parent to beckon the assistance of a physician for every trifling affliction that a child may suffer, because everyday experience teaches that many of a child's ills may be overcome by simple household nursing." *Matter of Hofbauer,* 393 N.E.2d 1009, 1013 (N.Y. 1979). Therefore, a finding of medical neglect based on psychological needs of the child typically involves a parent's refusal of needed professional psychological assistance such as therapy or residential treatment. *See Matter of Junaro C.*, 536 N.Y.S.2d 109, 109-10 (2d Dept. 1988) (affirming finding of medical neglect after mother refused consent to have her son transferred to a residential psychiatric treatment, failed to provide any alternative that would give her son the highly structured environment he required, and failed to attend ordered therapy sessions); *In Re Alexander L.*, 2012 N.Y. Slip Op. 07062 (1st Dept. 2012) (affirming finding of medical neglect for child with fragile emotional state whose mother terminated three years of weekly therapy)*; Judah S. v. Gary R.*, 124 N.Y.S.3d 69, 71 (2d Dept. 2020) (affirming finding that father had medically neglected children by refusing therapy for them despite multiple referrals and

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being made aware several times of their worsening behavior). Thus, a medical assessment that no treatment was necessary refutes any claim of medical neglect.

Here, unlike children exhibiting substantial psychological diminution, Hannah's doctors never prescribed any psychological treatment or intervention. Rather, they recommended "simple household nursing" to address her behavioral problems, indicating that like the "trifling afflictions" discussed in *Hofbauer,* these problems were not severe enough to trigger the protections of the Act. *Hofbauer,* 393 N.E.2d at 1013. Dr. Zhu recommended that Hannah's parents and teachers use behavioral modification techniques, and counseled Mr. Green on the use of such techniques. Exhibit B at 2. Similarly, the occupational therapist recommended Hannah's parents and the school work together – without further expert assistance – to set rules for her behavior. Exhibit H at 10; Exhibit K at 21. Unlike medically neglected children whose parents denied them needed therapy or residential treatment, Hannah was never prescribed any professional psychological assistance. Exhibit Z at 5 (ACS caseworker concluding no services or interventions were required); *see, e.g., Matter of Junaro C.*, 536 N.Y.S.2d at 110 (upholding finding of medical neglect based on mother's refusal of needed residential treatment). Thus, Hannah's substantial record of medical clearances affirmatively refutes the allegation of medical neglect and even taken alone justifies expungement of Ms. Smith's record.

III.B.2. Ms. Smith's thorough and dedicated pursuit of appropriate medical care for Hannah also affirmatively refutes the report of medical neglect.

In addition to a showing of serious harm or risk thereof, to demonstrate medical neglect, the government must prove that a parent failed "to exercise a minimum degree of care . . . in supplying the child with adequate medical care." N.Y. FAM. CT. ACT § 1012(f)(i)(A) (McKinney 2023). Although parents have a duty to provide mental health care when made aware that such

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treatment is necessary to prevent their child's emotional or psychological impairment, *Judah S.*, 124 N.Y.S.3d at 71, the broad standard of "adequate medical care" affords great deference to a parent's choice of treatment. *See Matter of Felicia D.*, 693 N.Y.S.2d 41, 42-43 (1st Dept. 1999) (affirming dismissal of medical neglect petition based on mother's refusal of residential treatment for her child when she consented to an adequate alternative, outpatient care).

In providing adequate medical care, a parent may rely on the recommendations of any attending clinician. *Hofbauer,* 393 N.E.2d at 1014. To determine whether the parents have pursued adequate treatment, courts cannot "assume the role of a surrogate parent," but only ask "whether the parents . . . have provided for their child a treatment which is recommended by their physician and which has not been totally rejected by all responsible medical authority." *Id.* While endorsing reliance on physicians, the Court of Appeals emphasized that in making care decisions, parents may rely on the "recommendations and competency" of a practitioner licensed by the State, for such a person is "recognized by the State as capable of exercising acceptable clinical judgement." *Id.* at 1014 (quoting *Doe v. Bolton,* 410 U.S. 179, 199 (1973)*, reh. den.* 410 U.S. 959 (1973)). In cases of alleged behavioral illness, this rationale clearly extends to those licensed by the State to treat behavioral health: here, occupational therapists, N.Y. EDUC. LAW § 7902 (McKinney 2023), and psychoanalysts, N.Y. EDUC. LAW § 8405 (McKinney 2023).

Nor does the law require the parent's chosen physician to conform with widely accepted medical advice. Only those decisions entirely "contrary to medical authority" are medically neglectful. *Matter of Shawndel M.*, 824 N.Y.S.2d 335, 336 (2d Dept. 2006) (upholding neglect finding where mother refused a recommended transfer to an intensive care unit for her diabetic daughter, and encouraged her daughter to pull out an IV and leave the hospital against all medical advice); *see also Hofbauer*, 393 N.E.2d at 1011 (dismissing petition where parents refused

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traditional chemotherapy, opting instead for a metabolic course of treatment "not widely embraced by the medical community"). Instead, a parent may refuse to consent to a physician's recommendations as long as she provides an alternative course of treatment. *Matter of Nabil H.A.*, 150 N.Y.S.3d 128, 130 (2d Dept. 2021) (finding a mother was not neglectful when she refused consent to a recommended stay at the hospital and administration of a psychiatric drug, instead allowing outpatient care). Because parents retain significant discretion to direct their child's treatment, a "mother's refusal to consent to the course of medical treatment proposed by mental health professionals" for her son experiencing hallucinations and a desire to self-harm "would not, by itself, have justified a finding of medical neglect." *Matter of Jaelin L.*, 5 N.Y.S.3d at 249 (affirming finding of medical neglect after respondent mother also denied seriousness of symptoms and refused to cooperate in forming alternative course of treatment); *see also Matter of Ariel P.*, 957 N.Y.S.2d 736, 738 (2d Dept. 2013) (reversing finding of medical neglect after mother refused medication and continued public hospitalization, but consented to discharge to private hospital).

In addition to the broad discretion allowed to a parent's medical decisions, the FCA mandates that courts pay an extra degree of deference to a parent's choice of care when the alleged harm to the child is psychological. Beyond the showing of fault always required under the Act – that a child's impairment is a result of their parent's failure to exercise a minimum degree of care – in psychological harm cases, the child's "impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child." N.Y. FAM. CT. ACT §§ 1012(f)(i), 1012(h) (McKinney 2023). As the Court of Appeals explained in *Nicholson,* "the Legislature recognized that the source of emotional or mental impairment – unlike physical injury – may be murky, and that it is unjust to fault a parent too readily." *Nicholson*, 820 N.E.2d at 846. Unlike the failure to exercise a minimum degree of care

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standard found elsewhere in the FCA, psychological harm demands a higher degree of culpability (inability or unwillingness) as well as a higher degree proof of causation. N.Y. FAM. CT. ACT § 1012(f)(i) (McKinney 2023); *see Matter of Linda E.*, 533 N.Y.S.2d 542, 544-5 (2d Dept. 1988) (reversing fact-finding order and dismissing petition of medical neglect where parents objected to continued hospitalization of their "disturbed child" and failed to bring her to weekly outpatient therapy because the state could not prove that the child's difficulties were caused by parent's reluctance to engage in treatment). Thus, to find psychological neglect, the government must show that a child's substantial psychological diminution is clearly attributable to their parent's inability or unwillingness to accept the care of any mental health professional.

In the present case, Ms. Smith went above and beyond a minimum degree of care by promptly acting on the school's request to seek psychological assessment for Hannah. Unlike the mother in *Jaelin L.*, 5 N.Y.S.3d at 249, who discounted the seriousness of her son's symptoms, Ms. Smith immediately acknowledged the seriousness of the behavioral problems the school described and demonstrated willingness to provide care. Exhibit H at 3 ("I agree that [Hannah] could use behavioral modification therapy. . . I really appreciate you folks flagging this . . . It is an issue that needs to be addressed"). Ms. Smith's decision to pursue medical assessments rather than an IEP, which could have affected Hannah's academic prospects, was well within the degree of care required by the FCA. Indeed, the family court gives great deference to parents like Ms. Smith who choose "one course of appropriate medical treatment over another." *Weber v. Stony Brook Hospital*, 467 N.Y.S.2d 685, 687 (2d Dept. 1983) (reversing finding of medical neglect and dismissing petition against parents of an infant born with serious deformities who refused a recommended operation that would reduce the chance of infection but likely leave the child without the use of her legs in the future). While deciding against an assessment for an IEP, Ms.

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Smith chose an alternative course of treatment by pursuing psychological assessments and an informal, provider-endorsed plan for behavioral modification. *Id* at 687; Exhibit H at 3.

Further, by promptly and thoroughly seeking appropriate medical care for Hannah, Ms. Smith continued to exceed the minimum degree of care required by the FCA. During the investigation, "CPS was provided documentation stating [Hannah] was seen and evaluated by several providers for her behavioral issues." Exhibit Z at 5; *see also* Exhibit E at 34 (concluding that Ms. Smith's pursuit of evaluations demonstrated moderate to high protective capacity). Within a month of the school's initial recommendation that Hannah be psychologically assessed, Ms. Smith had Hannah seen by her pediatrician, an occupational therapist, a pediatric neurologist, and a psychoanalyst. Exhibit A at 18-19; Exhibit B; Exhibit N; Exhibit L at 1. She and her husband secured all of these appointments on their own, and reached out to nearly 50 providers to do so. Exhibit E at 21 (noting "**[Ms. Smith] has taken Hannah to several people and has not had one referral**") (emphasis in original); Exhibit H at 4 (describing medical outreach to Berkeley staff); Exhibit K (logging contact with providers).

Ms. Smith also exercised care by advocating consistently for Berkeley to implement the recommendations for behavioral modification made by Dr. Zhu and Dr. Williams. Exhibit H at 9 (asking Berkeley staff to implement behavioral modification techniques); Exhibit G at 4-5 (requesting DOE assistance ensuring Hannah was treated properly at Berkeley). She implemented behavioral modification techniques herself at home, including speaking with Hannah about how to treat others. Exhibit H at 10; Exhibit F at 8. Ms. Smith's actions clearly fall within the wide range of parental discretion protected by *Hofbauer* because she not only "[relied] upon the recommendations and competency of the attending physician," but also complied fully with all medical recommendations to address Hannah's behavior. *Hofbauer,* 393 N.E.2d at 1014.

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Additionally, going above and beyond doctor's orders, Ms. Smith enrolled Hannah in therapy as soon as a provider became available. Exhibit P. Given this level of care, Hannah's continuing difficulty in school was not remotely attributable to Ms. Smith, much less "clearly attributable" as the FCA requires. N.Y. FAM. CT. ACT § 1012(h) (McKinney 2023).

Thus, clear and convincing evidence in the form of medical records, emails, and other communication demonstrates that Ms. Smith thoroughly pursued medical care for Hannah and consistently followed the recommendations of physicians. In addition to the fact that Hannah was never substantially psychologically impaired, Ms. Smith's more than adequate provision of medical care affirmatively refutes the allegation that Hannah was medically neglected and justifies expungement.

III.C. The report of inadequate guardianship should be expunged because even if true, Ms. Smith's alleged inability to control Hannah's behavior at school did not satisfy either the fault or harm elements of a neglect finding.

In addition to the allegation of medical neglect, the SCR contains an unsubstantiated report of inadequate guardianship against Ms. Smith. Exhibit Z at 9. A subcategory of child neglect under the FCA, inadequate guardianship entails a parent's failure to exercise a minimum degree of care in providing their child with proper supervision by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof "by any . . . acts of a similarly serious nature" to excessive corporal punishment or the misuse of drugs or alcohol. N.Y. FAM. CT. ACT § 1012(f)(i)(B) (McKinney 2023). The types of harm named in the statute itself – corporal punishment and substance abuse – can also form the basis for inadequate guardianship. *See Rosengarten v. New York State Off. Of Child. & Fam. Servs.*, 162 N.Y.S.3d 376, 377 (1st Dept. 2022) (denying amendment of indicated case for inadequate supervision by excessive corporal

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punishment when father hit his son and threw a water bottle at his head); *Christine Y. v. Carrion*, 904 N.Y.S.2d 808, 810 (3d Dept. 2010) (denying amendment of indicated case for inadequate supervision by alcohol abuse when mother drove while impaired with children in the car, risking an accident). But the catch-all provision also "clearly contemplates that the instances of neglectful behavior mentioned therein are not an exclusive list." *Matter of Lonell J.*, 673 N.Y.S.2d 116, 117 (1st Dept. 1998). Just like any other type of neglect under the FCA, the catch-all of inadequate guardianship encompasses acts that fall below a minimum degree of care and expose a child to serious harm or the imminent risk of such harm. N.Y. FAM. CT. ACT § 1012(f)(i)(B) (McKinney 2023); *Nicholson*, 820 N.E.2d at 846 ("the statutory test is '*minimum* degree of care' – not maximum, not best, not ideal – and the failure must be actual, not threatened").

A parent's decision to leave her child alone or with someone else only amounts to an act of a "similarly serious nature" as alcohol or drug abuse or corporal punishment when that decision exposes the child to a known risk of serious harm. N.Y. FAM. CT. ACT § 1012(f)(i)(B) (McKinney 2023). For instance, leaving children with known abusers is neglectful. *Matter of John Z.*, 2006 N.Y. Slip Op. No. 15654–05, *7 (N.Y. Fam. Ct. Oct. 27 2006) (finding that entrusting children to abusive boyfriend and covering up his actions was inadequate guardianship); *Debra VV*, 798 N.Y.S.2d 264, 265-66 (3d Dept. 2005) (affirming denial of amendment of indicated record for inadequate guardianship when guardian entrusted a child to the care of their father in violation of a court order, resulting in the child's sexual abuse). Similarly, it was neglectful to leave children unsupervised in a non-childproofed room where one child had a serious disability. *Matter of Jarrett SS.*, 122 N.Y.S.3d 832, 836 (3d Dept. 2020).

Conversely, where there is not a known risk, the FCA does not automatically fault parents who fail to supervise their children, even when harm occurs as a result. "Leaving children

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unattended . . . does not amount to neglect in all cases." *Matter of Alachi I.*, 2023 N.Y. Slip Op. 01822, *4 (3d Dept. 2023). In that case, a mother's repeated failure to supervise three children, including twice leaving when her infant fell, was not neglectful because she was doing her best to watch them while attending to their needs, and requested assistance in caring for them. *Id.* Similarly, a father's decision to let his 5-year-old play alone on a swing set, where she was injured, was not inadequate guardianship under the Act because he took reasonable precautions by checking on her every 10-15 minutes and believed that her older sister was watching her. *Matthew WW.*, 799 N.Y.S.2d at 596. In another instance, leaving an unlocked gun in the home where a 12-year-old was able to get ahold of and fire it was not inadequate guardianship because, when he found out what had happened, respondent father immediately took precautions by removing all ammunition. *Steven A.*, 762 N.Y.S.2d at 674; *see also In re Janique Y.*, 682 N.Y.S.2d 706, 707-08 (3d Dept. 1998) (affirming dismissal of petition based on serious burns a child suffered after playing with a lighter mother left on the table while sleeping, after mother had previously spoken with children about the dangers of fire). Thus, a record of inadequate guardianship should be expunged where a parent can show that the decision to leave their child unsupervised or with someone else was not unduly risky.

In the present case, Ms. Smith's alleged inability to control Hannah's behavior at school, even if true, did not amount to inadequate guardianship. Sending Hannah to a city-run preschool did not entail a known risk of serious harm. Per the SCR record, "The case came in due to parents . . . *not being able to control the child's behavior*" [sic] (emphasis added). Exhibit Z at 5. Yet apart from the school setting, there was never any allegation that Ms. Smith could not control Hannah's behavior. Moreover, simply being unable to control a child's behavior does not amount to neglect. *See Alachi*, 2023 N.Y. Slip Op. at *4. Thus, the report of inadequate guardianship turns on the

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question of whether Ms. Smith exercised a minimum degree of care in entrusting her daughter's supervision to Berkeley. While Hannah's behavior at preschool might have resulted in harm, Ms. Smith's decision to send her to Berkeley was like the father's decision in *Matthew WW* to let his daughter play alone on the swings, in that both parents believed another responsible party was watching their child. *Matthew WW*., 799 N.Y.S.2d at 596. Unlike parents who entrusted children to known abusers, *see e.g. Debra VV* 798 N.Y.S.2d at 265-66, Ms. Smith reasonably assumed that Berkeley would be able to meet Hannah's needs. When Ms. Smith later determined that Berkeley was not able to do so, she withdrew her daughter from the school. Exhibit W at 8.

Thus, Ms. Smith's actions in supervising Hannah went well above a minimum degree of care. Moreover, as discussed above, Hannah did not suffer serious harm or the risk thereof. *See Matter of Hakeem S.*, 171 N.Y.S.3d 261, 264 (3d Dept. 2022), *appeal denied*, 39 N.Y.3d 904 (N.Y. 2022) (reversing finding of neglect against mother who lost consciousness drinking while her children were asleep and was brought to hospital, because children were not harmed). Therefore, the inadequacy of the allegations of inadequate guardianship, even if true, affirmatively refutes this report. For these reasons, both records should be expunged.

III.D. The Office of Children and Family Services should exercise its discretion to expunge Ms. Smith's record because the underlying reports were likely made in bad faith.

Expungement is particularly justified when, in addition to being refuted, a report was made in bad faith. Expungement, rather than sealing, of bad-faith reports is consistent with the purpose of the SCR because such reports – which may be misleading to future investigators and are not based in fact – do not serve the purpose of detecting patterns of abuse. *See* NY Senate Debate on 1996 Senate Bill S5959A, Feb. 5, 1996 at 939 (expressing concern about "unfounded reports being

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used as retaliatory mechanisms"); *id*. at 890. Indeed, false reporting in the second degree is an alternate ground for expungement, even when the parent cannot affirmatively show that their child was not neglected. N.Y. SOC. SERV. LAW § 422(5)(c)(i) (McKinney). No cases have been reported under this provision, however, suggesting under-enforcement of criminal false reporting statutes. Following the maxim of *noscitur a sociis*, which provides that "words used in a statute are construed in connection with . . . the words and phrases with which they are associated," this provision reveals that evidence of bad faith weighs in favor of expungement. *Trump-Equitable Fifth Ave. Co. v. Gliedman*, 443 N.E.2d 940, 943 (N.Y. 1982).

Here, the circumstances strongly suggest that the only reason this case was opened was due to bad-faith reports made by Berkeley staff. Although the names of the sources were not shared with Ms. Smith, many indicia reveal that both sources were associated with Berkeley. Exhibit E at 2, 5-6, 7, 8, 32. CPS visited the school to speak with the first source, who also provided the school address to register that report, and the second source stated that she wished to remain anonymous because while Berkeley policy did not ban making reports, "this report [was] being made by her independently of the school." *Id.* at 2, 7, 32. Moreover, both sources provided information about Hannah that no one but Berkeley staff would have known. *Id.* at 5-6 (recommendations that Hannah receive psychological evaluation), 6 (Hannah's interactions with teachers), 8 (policy of removing Hannah from the classroom for discipline), 32 (Hannah withdrawn from Berkeley).

If both reports were made by Berkeley staff, as this record strongly suggests, then they were made in bad faith. Ms. Smith consistently notified Berkeley staff about Hannah's appointments as they were scheduled and kept. Exhibit F at 5 (secured occupational therapy referral and scheduled appointment with pediatric psychoanalyst); Exhibit L at 1 (update from appointment with pediatric psychoanalyst); Exhibit H at 5 (scheduled appointment with

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pediatrician), 9 (updates from appointments with pediatrician and pediatric neurologist), 10 (update from appointment with occupational therapist). Yet the first source reported that Hannah's parents had refused to have her evaluated, an assertion that Berkeley staff would have known was false. Exhibit E at 6. Indeed, in contradiction to the first source, the second source admitted that Ms. Smith had pursued recommended evaluations. *Id.* at 32. The escalation of hostility between Berkeley staff and Ms. Smith also lends credibility to the possibility of a bad faith report. *See* Exhibit L at 1 (Berkeley staff stating that trust had been lost). Moreover, just two weeks before the reports were made, Berkeley staff had threatened Ms. Smith that they would make such a report if she continued to question their treatment of Hannah. Exhibit G at 4. Taken together, this evidence shows that the sources who reported that Hannah was neglected made statements they knew were false, and did so as a result of conflict with Ms. Smith. Thus, the reports were made in bad faith, are more likely to mislead than inform future investigators, and should be expunged.

IV. CONCLUSION

Expungement of the record of Ms. Smith in the SCR is clearly justified. Not only does Ms. Smith show by clear and convincing evidence that she provided Hannah with more than adequate medical care; she also shows that she fought for her daughter's behavioral health needs to be met at school consistent with medical recommendations. Ms. Smith's extensive record of outreach and visits to doctors stands alone to affirmatively refute that she was ever neglectful of Hannah, much less that Hannah's behavioral difficulties at school could be "clearly attributable" to her mother. Moreover, through medical assessments by several doctors, Ms. Smith shows by clear and convincing evidence that Hannah's behavior at school never rose to the level of serious harm or imminent risk of such harm. Difficulty adjusting to a new school environment post-pandemic simply does not amount to substantial diminution of psychological functioning. Further, the record

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of inadequate guardianship should be expunged because Ms. Smith demonstrates by clear and convincing evidence that any misbehavior Hannah displayed at school cannot be attributed to Ms. Smith and did not raise a risk of serious harm to her child. Finally, these refuted reports against Ms. Smith were made in bad faith, and should be expunged.

Applicant Details

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Applicant Education

BA/BS From	**University of Georgia**
Date of BA/BS	**May 2021**
JD/LLB From	**Notre Dame Law School** **http://law.nd.edu**
Date of JD/LLB	**May 17, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Journal of Legislation**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 25, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year law student at Notre Dame Law School. I am writing to apply for a clerkship in your chambers beginning in 2024.

Enclosed please find my resume, law school and undergraduate transcripts, and writing sample. You will receive letters of recommendation from the following people. In the meantime, they would be welcome to discuss my candidacy with you.

Prof. Jimmy Gurulé	Prof. Richard W. Garnett	Mr. Reid Swayze
Notre Dame Law School	Notre Dame Law School	Drug Enforcement Administration
Jimmy.Gurule.1@nd.edu	rgarnett@nd.edu	Reid.P.Swayze@dea.gov
(574) 631-5917	(574) 631-8078	(213) 923-0805

If I can provide additional information that would be helpful to you, please let me know. Thank you for your consideration.

Respectfully,

William J. Golden

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EDUCATION

University of Notre Dame Law School — Notre Dame, Indiana
Juris Doctor Candidate — May 2024
GPA: 3.521

- Honors: Best Brief Award for Excellence in Persuasive Writing (Appellate)
- Activities: Notre Dame *Journal of Legislation*, Executive Legislative Editor; Notre Dame Exoneration Justice Clinic; Public Interest Leadership Council, Co-Chair Emeritus; Future Prosecuting Attorneys Council, President Emeritus; Federalist Society, Member; Honor Council Prosecutor

University of Georgia — Athens, Georgia
Bachelor of Arts in Political Science and Economics, magna cum laude, with Minor in Criminal Justice Studies — May 2021
GPA: 3.86

- Honors: Dean's List, 4 semesters
- Activities: Georgia Political Review, Business Manager (2020 – 2021), Staff Writer (2019 – 2021); Outreach Director, Tripp for State Senate; Federal Work Study Student, Map and Government Information Library

EXPERIENCE

United States Attorney's Office for the District of Columbia — Washington, D.C.
Legal Intern — June 2023 – August 2023

Drug Enforcement Administration, Office of Chief Counsel — Arlington, Virginia
Legal Intern — May 2022 – August 2022

- Researched and analyzed novel legal issues including Canadian privacy law, Second Amendment sanctuary proposals, and searches of abandoned drones
- Drafted internal and external memoranda, pleadings, and legal correspondence for International and Intelligence, Diversion, Division Counsel, Criminal, Administrative, and Litigation Divisions
- Participated in training exercises for law enforcement officers, client meetings, and interagency deliberations

Myrtle Beach Area Chamber of Commerce — Myrtle Beach, South Carolina
Government Affairs Intern — May 2021 – August 2021

- Re-established recruiting efforts for National I-73/74/75 Corridor Association, generating more than 40 relationships with invested parties along federally designated I-73/74/75 Corridor
- Created policy proposals, advocacy materials, and research memoranda to advocate for Myrtle Beach area business community and National I-73/74/75 Corridor Association
- Conducted briefings for business leaders and elected officials on the status of Myrtle Beach Area Chamber of Commerce's legislative priorities and progress of the National I-73/74/75 Corridor Association's partnership recruitment

Georgia Chamber of Commerce — Atlanta, Georgia
Public Affairs Legislative Aide — January 2021 – May 2021

- Organized Government Affairs Council (GAC) meetings for member lobbyists by updating legislative bill tracker, crafting amendments, taking notes on General Assembly proceedings, and providing administrative assistance
- Attended legislative committee meetings pertaining to various GAC committees, including Law & Judiciary, Federal Affairs, and Business & Industry
- Wrote position letters promoting the opinions of Georgia Chamber of Commerce and affiliated organizations

ADDITIONAL INFORMATION

- **Volunteer and Community Experience:** Intake Volunteer, Notre Dame Exoneration Justice Clinic (January 2022 – May 2022); Student Mentor, UGA Economics Society Mentor Program (February 2020 – January 2021)
- **Interests:** Classic Movies, Visiting MLB Stadiums, and Genealogy Research

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Date Issued: 06-JUN-2023
Page: 1

Birth Date: 09-13-XXXX

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Course Level: Law
Program: Juris Doctor
College: Law School
Major: Law

CRSE ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA	OVERALL TOTALS ATTEMP HRS	EARNED HRS	GPA HRS	GPA
UNIVERSITY OF NOTRE DAME CREDIT:												
Fall Semester 2021												
Law School												
LAW 60105	Contracts	4.000	B	12.000								
LAW 60302	Criminal Law	4.000	B+	13.332								
LAW 60703	Legal Research	1.000	B+	3.333								
LAW 60705	Legal Writing I	2.000	B	6.000								
LAW 60901	Torts	4.000	A-	14.668								
		Total		49.333	15.000	15.000	15.000	3.289	15.000	15.000	15.000	3.289
Spring Semester 2022												
Law School												
LAW 60307	Constitutional Law	4.000	B+	13.332								
LAW 60308	Civil Procedure	4.000	A-	14.668								
LAW 60707	Legal Resrch & Writing II-MC	1.000	A-	3.667								
LAW 60906	Property	4.000	A-	14.668								
LAW 70318	Legislation & Regulation	3.000	A-	11.001								
LAW 75700	Galilee	1.000	S	0.000								
		Total		57.336	17.000	17.000	16.000	3.584	32.000	32.000	31.000	3.441
Fall Semester 2022												
Law School												
LAW 70201	Evidence	3.000	A-	11.001								
LAW 70403	International Criminal Law	3.000	B+	9.999								
LAW 70452	Con Crim Proc: Investigations	3.000	B+	9.999								

CONTINUED ON PAGE 2

UNIVERSITY OF NOTRE DAME NOTRE DAME, INDIANA 46556

Golden, William J.
Student ID: XXXXX6546

Birth Date: 09-13-XXXX

Date Issued: 06-JUN-2023

CRSE	ID	COURSE TITLE	CRS HRS	GRD	QPTS	UND SEMESTER TOTALS ATTEMP HRS	UND SEMESTER TOTALS EARNED HRS	UND SEMESTER TOTALS GPA HRS	UND SEMESTER TOTALS GPA	OVERALL TOTALS ATTEMP HRS	OVERALL TOTALS EARNED HRS	OVERALL TOTALS GPA HRS	OVERALL TOTALS GPA
University of Notre Dame Information continued:													
LAW	73837	Judicial Role in Amer History	2.000	B+	6.666								
LAW	75726	Exoneration Justice Clinic	4.000	A	16.000								
LAW	75753	Journal of Legislation	1.000	S	0.000								
			Total		53.665	16.000	16.000	15.000	3.578	48.000	48.000	46.000	3.486
Spring Semester 2023													
Law School													
LAW	70807	Professional Responsibility	3.000	B+	9.999								
LAW	73403	Foreign Corrupt Practices Act	2.000	A-	7.334								
LAW	75710	Intensive Trial Ad	4.000	S	0.000								
LAW	75726	Exoneration Justice Clinic	4.000	A	16.000								
LAW	75753	Journal of Legislation	1.000	S	0.000								
			Total		33.333	14.000	14.000	9.000	3.704	62.000	62.000	55.000	3.521
Fall Semester 2023													
IN PROGRESS WORK													
LAW	70311 M	Federal Courts	3.000	IN PROGRESS									
LAW	70324 M	National Security Law	3.000	IN PROGRESS									
LAW	70365 M	Federal Criminal Practice	3.000	IN PROGRESS									
LAW	70468 M	Post-Conviction Remedies	2.000	IN PROGRESS									
LAW	73301 M	State Constitutional Law	2.000	IN PROGRESS									
LAW	75753 M	Journal of Legislation	1.000	IN PROGRESS									
		In Progress Credits	14.000										

********** TRANSCRIPT TOTALS **********

NOTRE DAME	Ehrs:	62.000	QPts:	193.667
	GPA-Hrs:	55.000	GPA:	3.521
TRANSFER	Ehrs:	0.000	QPts:	0.000
	GPA-Hrs:	0.000	GPA:	0.000
OVERALL	Ehrs:	62.000	QPts:	193.667
	GPA-Hrs:	55.000	GPA:	3.521

********** END OF TRANSCRIPT **********

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LE London, England (Law-JD)
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LS London, England (Summer AL)
PA Perth, Australia
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Letter Grade	Point Value	Legend
A	4	
A-	3.667	
B+	3.333	
B	3	
B-	2.667	
C+	2.333	
C	2	Lowest passing grade for graduate students.
C-	1.667	
D	1	Lowest passing grade for undergraduate students.
F	0	Failure
F*	0	No final grade reported for an individual student (Registrar assigned).
X	0	Given with the approval of the student's dean in extenuating circumstances beyond the control of the student. It reverts to "F" if not changed within 30 days after the beginning of the next semester in which the student is enrolled.
I	0	Incomplete (reserved for advanced students in advanced studies courses only). It is a temporary and unacceptable grade indicating a failure to complete work in a course. The course work must be completed and the "I" changed according to the appropriate Academic Code.
U		Unsatisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).

Grades which are not included in the Computation of the Average

S Satisfactory work (courses without semester credit hours, as well as research courses, departmental seminars or colloquia or directed studies; workshops; field education and skill courses).
V Auditor (Graduate students only).
W Discontinued with permission. To secure a "W" the student must have the authorization of the dean.
P Pass in a course taken on a pass-fail basis.
NR Not reported. Final grade(s) not reported by the instructor due to extenuating circumstances.
NC No credit in a course taken on a pass-no credit basis.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: http://registrar.nd.edu/students/gradefinal.php

THE LAW SCHOOL GRADING SYSTEM

The current grading system for the law school is as follows: A (4.000), A- (3.667), B+ (3.333), B (3.000), B- (2.667), C+ (2.333), C (2.000), C- (1.667), D (1.000), F or U (0.000).

Effective academic year 2011-2012, the law school implemented a grade normalization policy, with mandatory mean ranges (for any course with 10 or more students) and mandatory distribution ranges (for any course with 25 or more students). For Legal Writing (I & II) only, the mean requirement will apply but the distribution requirement will not apply. The mean ranges are as follows: for all first-year courses (except for the first-year elective, which is treated as an upper-level course), the mean is 3.25 to 3.30; for large upper-level courses (25 or more students), the mean is 3.25 to 3.35; for small upper-level courses (10-24 students), the mean is 3.15 to 3.45.

For current and historical grade point averages by class, as well as additional information regarding prior grading policies and current distribution ranges, see: http://registrar.nd.edu/students/gradefinal.php

TRANSCRIPT NOT OFFICIAL IF WHITE SIGNATURE AND BLUE SEAL ARE DISTORTED

CHUCK HURLEY, UNIVERSITY REGISTRAR

In accordance with USC 438 (6) (4) (8) (The Family Educational Rights and Privacy Act of 1974) you are hereby notified that this information is provided upon the condition that you, your agents or employees, will not permit any other party access to this record without the written consent of the student. Alteration of this transcript may be a criminal offense.

COURSE NUMBERING SYSTEM

Previous course numbering systems (prior to Summer 2005) are available at the following website:
http://registrar.nd.edu/faculty/course_numbering.php

Beginning in Summer 2005, all courses offered are five numeric digits long (e.g. ENGL 43715).
The first digit of the course number indicates the level of the course.

ENGL 0 X - XXX = Pre-College course
ENGL 1 X - XXX = Freshman Level course
ENGL 2 X - XXX = Sophomore Level course
ENGL 3 X - XXX = Junior Level course
ENGL 4 X - XXX = Senior Level course
ENGL 5 X - XXX = 5th Year Senior / Advanced Undergraduate Course
ENGL 6 X - XXX = 1st Year Graduate Level Course
ENGL 7 X - XXX = 2nd Year Graduate Level Course (MBA / LAW)
ENGL 8 X - XXX = 3rd Year Graduate Level Course (MBA / LAW)
ENGL 9 X - XXX = Upper Level Graduate Level Course

UNIVERSITY OF GEORGIA

OFFICE OF THE REGISTRAR
ATHENS, GEORGIA 30602-6113

STUDENT ACADEMIC RECORD

THIS OFFICIAL TRANSCRIPT IS PRINTED ON SECURITY PAPER AND DOES NOT REQUIRE A RAISED SEAL

FIONA LIKEN
UNIVERSITY REGISTRAR

MONTH AND DAY OF BIRTH	STUDENT NAME
13-SEP	William J Golden

DATE PRINTED	PAGE NO.	TRANSCRIPT CONTROL NUMBER
18-JAN-2022	1	DocumentID: 37554974

DEGREE OBJ.	COLLEGE OR SCHOOL	MAJOR
	See program information below.	

ISSUED TO: William Golden

SPECIAL REQUIREMENTS	REGENTS EXAM		HISTORY	CONSTITUTION		PHYSICAL EDUCATION
	ESSAY	READING		FEDERAL	GA.	
→	OK	OK	OK	OK	OK	OK

Course Level: Undergraduate

Program
Bachelor of Arts
College : College of Business
Major : Economics
Maj/Concentration : Public Policy
Minor : Criminal Justice Studies

Secondary
Bachelor of Arts
College : School of Pub and Intl Aff
Major : Political Science
Minor : Criminal Justice Studies

Degrees Awarded Bachelor of Arts 14-MAY-2021
Primary Degree
College : College of Business
Major : Economics
Maj/Concentration : Public Policy
Minor : Criminal Justice Studies
Inst. Honors: Magna Cum Laude

Degrees Awarded Bachelor of Arts 14-MAY-2021
Primary Degree
College : School of Pub and Intl Aff
Major : Political Science
Minor : Criminal Justice Studies
Inst. Honors: Magna Cum Laude

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R

TRANSFER CREDIT ACCEPTED BY THE INSTITUTION:

Fall 2017 U West Georgia

ECON 2105	Prin Of Macroecon	3.00	A	
ENGL 1101	English Comp I	3.00	A	
HIST 2702	World Civ II	3.00	A	
MATH 1113	Precalculus	3.00	A	
MATH 1TXX	Transfer Elective	1.00	A	

Ehrs: 13.00 GPA-Hrs: 13.00 QPts: 52.00 GPA: 4.00

Spring 2018 U West Georgia

********** CONTINUED ON NEXT COLUMN **********

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R

Transfer Information continued:

COMM 1100	Intro Public Speak	3.00	A	
ENGL 1102	English Comp II	3.00	A	
HIST 2112	Amer His Snc 1865	3.00	A	
PSYC 1101	Elem Psychology	3.00	A	

Ehrs: 12.00 GPA-Hrs: 12.00 QPts: 48.00 GPA: 4.00

Summer 2018 College Board AP

BIOL 1107	Principles of Biology I	3.00	K	
BIOL 1107L	Principles of Biology I Lab	1.00	K	
CHEM 1211	Freshman Chem I	3.00	K	
CHEM 1211L	Freshm Chem Lab I	1.00	K	
CHEM 1212	Freshman Chemistry II	3.00	K	
CHEM 1212L	Freshman Chemistry Lab II	1.00	K	
GEOG 1101	Human Geography	3.00	K	
POLS 1101	American Government	3.00	K	
STAT 2000	Introductory Statistics	4.00	K	

Ehrs: 22.00 GPA-Hrs: 0.00 QPts: 0.00 GPA: 0.00

INSTITUTION CREDIT:

Fall 2018

CLAS 1010	Roman Culture	3.00	B	9.00
ECON 2106	Principles of Microeconomics	3.00	A	12.00
FYOS 1001	First Year Odyssey	1.00	A-	3.70
INTL 3300	Intro to Comp Pol	3.00	A-	11.10
LATN 1001	Elementary Latin I	4.00	A	16.00

Ehrs: 14.00 GPA-Hrs: 14.00 QPts: 51.80 GPA: 3.70
Dean's List
Good Standing

Spring 2019

LATN 1002	Elementary Latin II	4.00	A	16.00
PHIL 2010	Introduction to Philosophy	3.00	A	12.00
PHIL 2020	Logic and Critical Thinking	3.00	A	12.00
POLS 4790	Sp Topics Amer Pol	3.00	A-	11.10

Ehrs: 13.00 GPA-Hrs: 13.00 QPts: 51.10 GPA: 3.93
Good Standing

********** CONTINUED ON PAGE 2 **********

UNIVERSITY OF GEORGIA

OFFICE OF THE REGISTRAR
ATHENS, GEORGIA 30602-6113

STUDENT ACADEMIC RECORD

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DEGREE OBJ.	COLLEGE OR SCHOOL	MAJOR
	See program information below.	

ISSUED TO:

SPECIAL REQUIREMENTS	REGENTS EXAM		HISTORY	CONSTITUTION		PHYSICAL EDUCATION
	ESSAY	READING		FEDERAL	GA.	
→	OK	OK	OK	OK	OK	OK

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:						
Summer 2019						
MATH	2250E	Calculus I for Sci and Eng	4.00	B	12.00	
POLS	4720E	Criminal Procedure	3.00	A	12.00	
Ehrs: 7.00 GPA-Hrs: 7.00 QPts: 24.00 GPA: 3.42						
Good Standing						
Fall 2019						
ECON	4010	Intermediate Microeconomics	3.00	A-	11.10	
LATN	2001	Intermediate Latin	3.00	A	12.00	
POLS	4150	Research Methods in Poli Sci	3.00	B+	9.90	
POLS	4635	Politics of Income Inequality	3.00	A	12.00	
POLS	4660	Southern Politics	3.00	A	12.00	
Ehrs: 15.00 GPA-Hrs: 15.00 QPts: 57.00 GPA: 3.80						
Dean's List						
Good Standing						
Spring 2020						
ECON	4300	Public Sector Econ	3.00	A	12.00	
ECON	4450	Ecn Analysis of Law	3.00	A	12.00	
ECON	4600	Labor Economics	3.00	A	12.00	
POLS	4020	Hobbes to Nietzsche	3.00	A-	11.10	
POLS	4600	Legislative Process	3.00	A	12.00	
POLS	5122	Campn Intern Essays	4.00	A	16.00	
Ehrs: 19.00 GPA-Hrs: 19.00 QPts: 75.10 GPA: 3.95						
Dean's List						
Good Standing						
Summer 2020						
ECHD	3170E	Drug and Alcohol Abuse Issues	3.00	A	12.00	
Ehrs: 3.00 GPA-Hrs: 3.00 QPts: 12.00 GPA: 4.00						
Good Standing						
Fall 2020						
CMLT	4260	The Black and Green Atlantic	3.00	A	12.00	
ECON	4020	Intermediate Macroeconomics	3.00	A	12.00	
ECON	5900	Senior Thesis	2.00	B	6.00	
********** CONTINUED ON NEXT COLUMN **********						

SUBJ	NO.	COURSE TITLE	CRED	GRD	PTS	R
Institution Information continued:						
ECON	6750	Introduction to Econometrics	3.00	B+	9.90	
POLS	3600	Criminal Just Admin	3.00	A	12.00	
SOCI	3810W	Criminology	3.00	A	12.00	
Ehrs: 17.00 GPA-Hrs: 17.00 QPts: 63.90 GPA: 3.75						
Dean's List						
Good Standing						
Spring 2021						
EDIT	2000E	Intro to Computers for Teacher	3.00	A	12.00	
EDIT	5100E	Assistive and Learning Tech	3.00	A	12.00	
PEDB	1950	FFL Walking	1.00	S	0.00	
Ehrs: 7.00 GPA-Hrs: 6.00 QPts: 24.00 GPA: 4.00						
Good Standing						

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	95.00	94.00	358.90	3.81
TOTAL TRANSFER	47.00	25.00	100.00	4.00
OVERALL	142.00	119.00	458.90	3.85

********** END OF TRANSCRIPT **********

U. S. Department of Justice
Drug Enforcement Administration
Office of Chief Counsel

www.dea.gov

June 27, 2023

Dear Honorable Judge:

I understand that William Golden has applied for a clerkship with your court. Mr. Golden is an excellent writer, has strong analytical skills, and is self-sufficient. He will be a great addition to your chambers.

I had the opportunity to supervise his work when he served as a legal intern at DEA Headquarters during the summer of 2022. Mr. Golden was tasked with writing memoranda and executive summaries relating to the operational work of DEA, identifying risk areas and analyzing the law. His work needed little review and he understood how to tailor his writing to the audience and to meet mission needs of executives. Mr. Golden also provided several oral briefings to me and my colleagues, answering our questions and identifying areas which required further analysis – which he completed succinctly and professionally.

Should you have any questions regarding Mr. Golden's work, please do not hesitate to contact me at 213-923-0805 or reid.p.swayze@dea.gov.

Sincerely,

_____
Reid Perry Swayze
Chief, Strategic Programs
Office of Chief Counsel
Drug Enforcement Administration

Notre Dame Law School
1100 Eck Hall of Law
Notre Dame, IN 46556

June 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing in support of William Golden, a rising third-year law student at Notre Dame Law School, who has applied for a judicial clerkship.

I am a law professor at Notre Dame Law School and Director of the Exoneration Justice Clinic (EJC). The EJC investigates and litigates wrongful conviction cases based on claims of actual innocence. We seek to correct the miscarriage of justice by vacating the wrongful conviction of our clients and assisting them in regaining their freedom.

William was a student in the EJC last academic year, both during the fall and spring semester. He was one of nine second-year law students selected from dozens of applicants to participate in the clinic. William was a productive and invaluable member of the EJC team.

The EJC students were assigned to intake teams where they evaluated requests from Indiana prison inmates for legal assistance. The students reviewed correspondence from the inmates and a detailed questionnaire filled out and submitted by them that provided detailed information about the criminal case. The students also reviewed published court opinions, open-source information relevant to the case, and interviewed witnesses. After completing the evaluation of their case, the students would draft an intake memorandum to the EJC staff lawyers recommending whether the case should be accepted or rejected for legal representation.

William was a passionate, dedicated, and tireless worker for our innocent clients. In fact, one of the intake cases that he worked on was accepted by the EJC for legal representation. William worked hundreds of hours on that case, convinced that the inmate had been wrongfully convicted and was innocent of the criminal charges.

In the student recommendation memorandum, William made cogent and compelling legal arguments that convinced the EJC staff lawyers to accept the inmate as a client. At the intake meeting, William did an outstanding job advocating for the inmate's innocence and defending his recommendation. His comments were thoughtful and reflected a solid understanding of the law and facts of the case.

In sum, William is an exceptionally smart, mature, responsible, and hard-working student. He is a strong leader, who leads by example and the force of his convictions. William is highly regarded and respected by the other EJC students and law faculty at Notre Dame.

It is for these reasons that I highly and enthusiastically recommend William Golden for a judicial clerkship. I am confident that if given the opportunity, he will make an invaluable contribution to the work of the court.

Sincerely,

Jimmy Gurulé
Professor of Law
Director, Exoneration Justice Clinic

Jimmy Gurule - Jimmy.Gurule.1@nd.edu - 574-631-5917

Notre Dame Law School
1100 Eck Hall of Law
Notre Dame, Indiana 46556

June 26, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

RE: Clerkship Application of William J. Golden

Dear Judge Walker:

I hope you are well. I am writing in support of the application of my student, William, who is a rising third-year student at Notre Dame Law School and has applied for privilege of serving as one of your law clerks.

I met William when he was a student in my large, required, first-year Criminal Law course. He was also one of my "mentees" through Notre Dame's First Generation Professionals group, and he was an "Associate" with the Church, State & Society Program, which I direct. We had a number of conversations outside of class, including a few group-lunch gatherings, and I believe I came to know him. I was pleased to support his application to be an Assistant Rector in one of Notre Dame's residence halls. All this is to say that I've enjoyed getting to know him, and that my impressions are positive. He strikes me as personable and easy-to-talk-to, in addition to being hard-working and intelligent.

As you can see from his transcript, he earned a "B+" grade from me in Criminal Law – which is above average, at Notre Dame – and his overall grade-point average is strong. He has been particularly dedicated to the work of our (relatively new) Exoneration Justice Clinic. Combined with his work experiences with the United States Attorney in the District of Columbia and with the Drug Enforcement Agency, this work has prepared him very well to engage and understand what was – in my experience, anyway – a substantial aspect of law clerks' portfolios.

Notre Dame Law School does not "rank" our students, but William's grades probably put him in the top third of his class. In addition, he is a very generous and active citizen here, and is involved in one of our journals as well as with a variety of student organizations. I am particularly grateful for his service as our Honor Council Prosecutor -- an important position that requires judgment and character.

I should note that, each year, because I teach a large first-year class, many good students ask me to write letters in support of their clerkship applications. I am happy to write these letters, because my own two years as a law clerk were wonderfully rewarding experiences, and the judges I was blessed with the opportunity to serve were great teachers and mentors for me. I am grateful to you, and to your colleagues, for your consideration and for the crucial role you play in law students' formation.

William would be, I am confident, a reliable and valuable member of your office team, as well as an amiable colleague. His co-clerks would like him, and he'd treat the rest of your team with respect. I bet you wouldn't mind eating a sandwich and sharing conversation with him around the conference table. I am happy to support his application. Please feel free to contact me if you have any questions about this letter.

Sincerely,

Richard W. Garnett
Paul J. Schierl / Fort Howard Corporation
Professor of Law

Richard W. Garnett - rgarnett@nd.edu - 574-631-6981

William Golden

Writing Sample Cover Sheet

The following writing sample is a slightly edited version of an assignment that I completed this past summer for a Senior Attorney within the Technology Section in DEA's Office of Chief Counsel. Drug-trafficking organizations have increasingly used unmanned drones in support of their operations. On occasion, these drones crash. My assignment was to develop an objective memorandum addressing the circumstances under which law enforcement may search an unattended drone pursuant to a theory that unattended drones have been abandoned. The assigning attorney reviewed the original assignment and approved this slightly edited version for use as a work sample after sensitive information was removed from the original assignment.

Memorandum

Subject	Date
Abandoned Drone Searches	7/19/2022

To	From
Stacey McReynolds & Tracy Suhr Senior Attorneys, CCS	William Golden Legal Intern

1. Questions Presented

Assuming that no other exceptions to the Fourth Amendment apply, under what circumstances can DEA agents search an unattended drone on the basis that it has been abandoned and therefore not entitled to Fourth Amendment protection?

2. Brief Answers

Drones can be searched when an individual has intended to relinquish their expectation of privacy, which can be indicated through "words, acts, and other objective facts."[1] Common acts demonstrating an intent to abandon one's expectation of privacy include a denial of an interest and the physical relinquishment of the searched property. Lost, misplaced, or intercepted drones would not constitute an abandonment because "there has to be some voluntary aspect…that [led] to the [object] being what could be called abandoned."[2]

3. Background

Drug trafficking organizations (DTOs) sometimes use drones as an additional method to transport drugs. As the availability of drones increases, their usage by DTOs may also increase. On occasion, these drones crash. Other times, drones may be discovered while they remain on the ground. This memo analyzes whether the data stored on a drone that has crashed or is otherwise discovered by law enforcement can be searched without a warrant, on the basis that the drone has been abandoned.

4. Discussion

A. Abandonment Standards

In order for a defendant to argue that a search violated their Fourth Amendment rights, they must first demonstrate that they had a "reasonable expectation of privacy" in the searched area.[3] If the defendant lacks a "reasonable expectation of privacy," then police can proceed without a warrant. The voluntary

[1] *United States v. Mendia*, 731 F.2d 1412, 1414 (9th Cir. 1984), quoting *United States v. Anderson*, 663 F.2d 934, 938 (9th Cir. 1981).
[2] *United States v. Small*, 944 F.3d 490, 503 (4th Cir. 2019).
[3] *See, e.g., United States v. Clark*, 891 F.2d 501, 506 (4th Cir. 1989).

abandonment of property results in the loss of an individual's expectation of privacy.[4] A police pursuit does not make the abandonment "involuntary."[5]When introducing evidence obtained during a warrantless search, "the government bears the burden of proving the admissibility of evidence" by a preponderance of the evidence.[6] The abandonment of property do not require the forfeiture of legal title or property interests, but rather require the person asserting Fourth Amendment protection to have forgone a "legitimate expectation of privacy in the invaded place."[7]

B. Abandonment

Abandonment inquiries are dependent "upon all relevant circumstances existing at the time" the search was conducted.[8] While abandonment inquiries are indeed fact-specific matters, there are three general types of abandonment cases.[9] In the first, a fleeing defendant relinquishes control over an item so as to make flight easier or to guarantee that they will not be caught in possession of the item. In the second, a defendant discards an item as trash, which police later recover. In the third, the defendant disavows having an interest in the item when questioned by police. Only the first and third types of abandonment cases appear relevant to searches of discovered drones.

When someone discards an item during a police pursuit, they may wish to recover it later, but in order to recover the discarded item, they must depend on third persons choosing not to access it. In *United States v. Jones*, the defendant, carrying a satchel, fled from police, discarding the satchel in a place that others could access.[10] Police later found the satchel and searched it. The court upheld the search since the defendant had discarded the satchel and denied ownership of it when it was found. Likewise, the court in *Small v. United States* determined that the defendant had discarded, not lost as the defendant claimed, his phone while being pursued by police. [11] Therefore, the defendant forfeited his expectation of privacy in the contents of the phone, such as its location data and text messages. [12] Like the police in *Small*, who were able to inspect the data on the defendant's phone when he abandoned it, DEA agents could inspect a drone and its contents, including electronic data, once it has been abandoned.

By leaving an item in a public place, a defendant abandons their expectation of privacy.[13] In *United States v. Voice*, the defendant was arrested away from an abandoned building, where he had been keeping his belongings. [14] The court concluded that the defendant had lost his expectation of privacy in his belongings when he left his property "unattended in place that was accessible by third persons."[15] Unmanned drones, unlike cars, do not require the operator to be in the same physical location. Cases involving the relinquishment of physical control of property may be inapplicable to drones since every

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[4] *See United States v. Jones*, 707 F.2d 1169, 1172 (10th Cir. 1983), quoting *United States v. Berd*, 634 F.2d 979, 987 (5th Cir. 1981).
[5] *Id.*
[6] *Small*, 944 F.3d at 502, quoting *United States v. Matlock*, 415 U.S. 164, 178 n.15 (1974).
[7] *United States v. Oswald*, 783 F.2d 663, 666 (6th Cir. 1986), quoting *United States v. Rakas v. Illinois*, 439 U.S. 128, 143 (1978).
[8] *See United States v. Manning*, 440 F.2d 1105, 1111 (5th Cir. 1971).
[9] *United States v. Basinski*, 226 F.3d 829, 837 (7th Cir. 2000).
[10] *See Jones*, 707 F.2d at 837.
[11] *Small*, 944 F.3d at 503.
[12] *Id.* at 498.
[13] *See United States v. Barlow*, 17 F.3d 85, 88 (5th Cir. 1994); *see also United States v. Thomas*, 864 F.2d 843, 846 (D.C. Cir. 1989) (expectation of privacy is reduced because the ability to recover property discarded in public is dependent on others who could physically access it).
[14] *United States v. Voice*, No. 08-30101-01-KES, 2009 WL 614724, at *5 (D.S.D. Mar. 6, 2009), *aff'd*, 622 F.3d 870 (8th Cir. 2010) ("an individual has no reasonable expectation of privacy in areas that are accessible to third persons").
[15] *Id.*; *see also Katz v. United States*, 389 U.S. 347, 351 (1967) ("What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.").

unmanned drone flight necessitates the relinquishment of physical possession by the operator. However, the expectation of privacy in drones and their contents may also be lower since the operator is in a different physical location. Due to the inherent risk that a drone may crash in a different physical location, a reasonable person would have to accept the risk that a drone may crash in a public place, leaving it unattended for some time in an area "accessible by third persons." Although a drone may crash in an area "accessible by third persons," the crash itself is likely an unintended result of the operator and thus lacking of the "voluntary aspect" necessary to abandon the drone.

A suspect's denial of a property interest in a searched area or item is a strong indication that they lack a subjective expectation of privacy in the area. In *United States v. Clark*, the defendant denied having any knowledge or interest in a suitcase, despite a ticket stub for it being found in his possession.[16] The court concluded that the defendant did not display "an actual (subjective) expectation of privacy" and was thus precluded from arguing that the search violated the Fourth Amendment.[17] Similarly, in *United States v. Nordling*, the suspect denied having any luggage when police asked.[18] Police later discovered his luggage and searched it, finding cocaine. The court held that "the district court could well find [the defendant's] actions were inconsistent with a continued expectation of privacy."[19] However, since drones do not require the physical possession of the operator, the likelihood that a suspect using a drone will be caught and questioned is much lower. Drones used for the transportation of drugs are often used in remote areas, where it may be difficult to locate the operator. Of course, suspects attempting to recover drugs from a drone could still be questioned.

C. Lost, Crashed, Discovered Drones

When a person loses property, they lack the "deliberate" intent required to abandon it.[20] In *United States v. Nealis*, the defendant left behind her purse in a hotel room, which a housekeeper discovered shortly after her checkout time.[21] The housekeeper turned the purse into security, who then searched the purse in an attempt to identify its owner. Instead, the security officer found drugs and contacted police. The court held that the purse was not abandoned, but "owners of lost property must expect some intrusion by finders."[22] Accordingly, their expectation of privacy is reduced to the extent required to find the rightful owner. The government has a legitimate interest in performing limited searches in order to identify the owner of lost or stolen property.[23] However, while the *Small* court only briefly discussed the distinction between lost and abandoned property, it concluded that the defendant still would have had an expectation of privacy in "the simple loss of a cell phone" since "ordinary mishaps do not constitute abandonments."[24]

The discovery of an unattended drone is likely not sufficient to warrant an immediate and unlimited search of its contents pursuant to the abandonment exception. In *United States v. Abbott*, police officers searched a vehicle which they believed a fleeing suspect had abandoned.[25] The car was parked illegally, but otherwise resembled a parked car. The keys were gone, the engine was off, and the doors were closed. The

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[16] *United States v. Clark*, 891 F.2d 501, 507 (4th Cir. 1989).
[17] *Id*., quoting *Katz*, 389 U.S. at 361.
[18] *See United States v. Nordling*, 804 F.2d 1466, 1469 (9th Cir. 1986).
[19] *Id.* at 1470.
[20] *Id.*
[21] *See United States v. Nealis*, 180 F. Supp. 3d 944, 947 (N.D. Okla. 2016).
[22] *Id.* at 950.
[23] *See also United States v. Sumlin*, 909 F.2d 1218 (8th Cir. 1990) (government has a legitimate interest in the identification and recovery of stolen property); *United States v. Catlett*, No. CRIM. A. 09-122-KKC, 2010 WL 1643774 (E.D. Ky. Jan. 14, 2010) *report and recommendation adopted*, No. CRIM. A. 5:09-122, 2010 WL 1643773 (E.D. Ky. Apr. 21, 2010) ("The government has a strong interest in identifying and returning lost and stolen property, which outweighs any casual possessory interest of the defendant.").
[24] *Small*, 944 F.3d at 502-03 (internal quotations omitted).
[25] *See United States v. Abbott*, 584 F. Supp. 442, 451 (W.D. Pa. 1984), *aff'd*, 749 F.2d 28 (3d Cir. 1984).

court held that these facts alone were not sufficient to presume that the car had been abandoned. Since drones can be remotely operated, there may be some time between the landing and retrieval of a drone. Thus, an unattended drone might not be abandoned, but rather awaiting retrieval by its operator. In order to search a drone as abandoned, police must first determine that the drone is in fact abandoned – not unattended or lost.

However, after a significant amount of time has passed, the search of an unattended drone may be warranted as abandoned property. In *United States v. Oswald*, the defendant abandoned a cocaine-filled briefcase after his car caught on fire.[26] A few hours later, police searched the briefcase and discovered its contents. The court upheld the search since it was reasonable to conclude that a person with an expectation of privacy in the contents of the briefcase would have come forward within the first few hours after the fire.[27] Although the *Oswald* court concluded a few hours was sufficient to hold that the defendant had abandoned the briefcase, another court, in *United States v. Mulder*, held that the defendant still had an expectation of privacy in items recovered from his hotel room, even though he had failed to check out on time and did not return until two days after his original departure date.[28] In most situations, time is a relevant circumstance in determining if a drone has been abandoned, but as the comparison of *Oswald* and *Mulder* demonstrates, time remains only *one* of the relevant circumstances.

D. Abandonment Pursuant to Policy

In *Abbott*, the court cited department policy defining abandoned vehicles, which the officers did not follow, as evidence that the officers did not believe the vehicle was actually abandoned.[29] Similarly, there are at least three regulations establishing time constraints for how long property can be left unattended on federal lands.[30] However, officials are not precluded from searching the abandoned property sooner if the possessor has demonstrated an intent to reduce their expectation of privacy in the property. Thus, these regulations represent the maximum amount of time that federal officials would have to wait before seizing and searching unattended or abandoned property For example, a National Park Service regulation prohibits "(2) Leaving property unattended for longer than 24 hours, except in locations where longer time periods have been designated…(b)(1) Property determined to be left unattended in excess of allowed period of time may be impounded."[31] Since property "left unattended in excess of the allowed period" could be accessed by the impounding officials, it would be due a lower expectation of privacy. However, the enactment of these regulations was more likely related to the property rights notion of abandonment than its constitutional definition. Ultimately, they likely represent no more than evidence of an intent to abandon since the owner has abandoned their property interest in them. Once a property interest has been abandoned, it would seem more difficult to argue that a former possessor retained an expectation of privacy in an item in which they no longer had a possessory interest.

5. Conclusion

There are some limited circumstances in which a crashed or unattended drone may be considered abandoned. However, in most circumstances, DEA agents would have to distinguish between drones awaiting retrieval and those that have been abandoned. A drone that appears to have crashed, especially recently, may not be abandoned but instead unattended or lost. Absent an intentional act, an individual would maintain an expectation of privacy in the contents of the drone. However, DEA agents could perform

[26] *See Oswald*, 783 F.2d at 663.
[27] *Id.* at 667.
[28] *See United States v. Mulder*, 808 F.2d 1346, 1347-48 (9th Cir. 1987).
[29] *Abbott*, 584 F. Supp. at 452.
[30] *See* 36 C.F.R. § 2.22 (2022); 43 C.F.R. § 8365.1–2 (2022); 50 C.F.R. § 28.41 (2022).
[31] 36 C.F.R. § 2.22 (2022).

a limited search in furtherance of a legitimate governmental interest, such as identifying the owner of a lost drone. Other exceptions to the warrant requirement may be better suited for discovered drones. On that note, drones may be entitled, like cars, to a lower expectation of privacy since drones are "a readily mobile vehicle."[32]

[32] *See United States v. Howard*, 489 F.3d 484, 493 (2d Cir. 2007) ("Whether a vehicle is 'readily mobile' within the meaning of the automobile exception has more to do with inherent mobility of the vehicle…"); *see also Abbott*, 584 F. Supp. at 445 (the twin justifications for the automobile exception are "exigency due to mobility" and "a diminished expectation of privacy" in automobiles, which could both be offered in support for a "drone exception" to the warrant requirement).

Applicant Details

First Name	**Ari**
Last Name	**Goldfine**
Citizenship Status	**U. S. Citizen**
Email Address	**ariel.s.goldfine@vanderbilt.edu**
Address	**Address** **Street** **819 18th Ave S, Apt 306** **City** **Nashville** **State/Territory** **Tennessee** **Zip** **37203** **Country** **United States**
Contact Phone Number	**602-380-2531**

Applicant Education

BA/BS From	**University of Pennsylvania**
Date of BA/BS	**May 2019**
JD/LLB From	**Vanderbilt University Law School** **http://law.vanderbilt.edu/employers-cs/judicial-clerkships/index.aspx**
Date of JD/LLB	**May 12, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Vanderbilt Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Miller, Steven
miller@rulegarza.com
202-843-9230

Allensworth, Rebecca
rebecca.allensworth@law.vanderbilt.edu
615-322-6568

Sitaraman, Ganesh
ganesh.sitaraman@vanderbilt.edu
615-322-6761

Stack, Kevin
kevin.stack@vanderbilt.edu
615-343-9220

This applicant has certified that all data entered in this profile and any application documents are true and correct.

ARI GOLDFINE
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(602) 380-2531 | ariel.s.goldfine@vanderbilt.edu

June 12, 2023

The Honorable Jamar K. Walker
United States District Court, Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker:

I am a third-year student at Vanderbilt Law School, writing to apply for a clerkship in your chambers for the 2024–2025 term. I am interested in clerking in your chambers as an opportunity to learn both from your background in government service and from the varied nature of your docket.

Last summer, I completed a legal internship with the Bureau of Competition at the Federal Trade Commission. In that role, I developed a working knowledge of antitrust law's shifting landscape. This year, I will be returning to the Bureau of Competition as a legal intern for the second half of the summer term; I am spending the first half as a summer associate at Williams & Connolly LLP. I believe these experiences will allow me to contribute meaningfully to your chambers.

Included are my resume, writing sample, transcript, and letters of recommendation. My recommenders include the following:

Rebecca Haw Allensworth Rebecca.Allensworth@Vanderbilt.edu | (615) 322-6568
Associate Dean for Research, Vanderbilt Law School

Steven L. Miller Miller@RuleGarza.com | (202) 843-9230
Attorney and Supervisor, Federal Trade Commission (formerly)

Ganesh Sitaraman Ganesh.Sitaraman@Vanderbilt.edu | (615) 322-6761
New York Alumni Chancellor's Chair, Vanderbilt Law School

Kevin M. Stack Kevin.Stack@Vanderbilt.edu | (615) 343-9220
Lee S. and Charles A. Speir Chair, Vanderbilt Law School

I hope to have the opportunity to interview with you.

Respectfully,

Ari Goldfine

ARI GOLDFINE

819 18th Avenue South, Apartment 306, Nashville, TN 37203
ariel.s.goldfine@vanderbilt.edu | (602) 380-2531

EDUCATION

Vanderbilt University Law School, Nashville, TN
Candidate for J.D., May 2024
GPA: 3.863
Honors and Activities: Senior Notes Editor, VANDERBILT LAW REVIEW; Dean's List (three semesters); Membership Director, Legal Aid Society; Mock Trial Tournament; Medical-Legal Partnership Clinic
Research Assistant: Professor Rebecca Allensworth, Fall 2023 (antitrust law); Professor Ganesh Sitaraman, Fall 2022 (international relations and domestic development)
Note (accepted for publication): *The Financialization of Airline Miles: Calling for Consumer Protection*

University of Pennsylvania, Philadelphia, PA
B.A. in Political Science and Communication with honors, *magna cum laude*, May 2019
Activities: Vice President, Penn Democrats; author, *34th Street Magazine*; editor, *The Daily Pennsylvanian*

EXPERIENCE

Federal Trade Commission (Bureau of Competition), Washington, D.C.
Incoming 2L Legal Intern, Health Care Division, July–August 2023

Williams & Connolly LLP, Washington, D.C.
Summer Associate, May–July 2023
Conducted legal research and prepared memoranda. Presented research findings to attorneys. Monitored circuit splits for appellate team, identifying key decisions in a timely manner.

Federal Trade Commission (Bureau of Competition), Washington, D.C.
1L Legal Intern, Health Care Division, May 2022–July 2022
Identified witnesses for further investigation, conducted witness interviews, and prepared interview reports. Assisted attorneys with negotiating scope of Civil Investigative Demands. Prepared chronology of key events. Conducted legal research and prepared memoranda.

NextGen America, Philadelphia, PA
Regional Organizing Director, May–November 2020
NextGen America is a progressive political action committee that mobilizes youth voters. Hired, trained, and managed team of eleven organizers in support of President Biden's general election victory in Pennsylvania.

Elizabeth Warren for President, Las Vegas, NV
Rural Organizer, August 2019–March 2020
Managed seventy-six precincts across five low-income, rural, conservative counties as part of Senator Warren's campaign. Recruited party leaders, community activists, and volunteers in support of the campaign.

Pennsylvania Innocence Project, Philadelphia, PA
Communication and Legal Research Intern, May 2018–August 2018
Analyzed historical case records to assist attorneys and law students in case evaluation and litigation.

INTERESTS

Trivia, camping trips, and reality television.

UNOFFICIAL DOCUMENT ISSUED TO STUDENT – NOT OFFICIAL

Name : Ariel Goldfine
Student # : 000758125
Birth Date : 09/16

Institution Info: Vanderbilt University

Academic Program(s)

Law J.D.
Law Major

Law Academic Record (4.0 Grade System)

2021 Fall

LAW	6010	**Civil Procedure**	4.00	**A-**	14.80
Instructor:		Nicholas Zeppos Nikki Younger			
LAW	6020	**Contracts**	4.00	**A-**	14.80
Instructor:		Rebecca Allensworth			
LAW	6040	**Legal Writing I**	2.00	**A-**	7.40
Instructor:		Barbara Rose Jennifer Swezey Jonathan Smith			
LAW	6060	**Life of the Law**	1.00	**P**	0.00
Instructor:		Timothy Meyer Sara Mayeux			
LAW	6090	**Torts**	4.00	**A**	16.00
Instructor:		James Rossi			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	15.00	14.00	53.00	3.785
CUMULATIVE:	15.00	14.00	53.00	3.785

2022 Spring

Term Honor: Dean's List

LAW	6030	**Criminal Law**	3.00	**A**	12.00
Instructor:		Terry Maroney			
LAW	6050	**Legal Writing II**	2.00	**A-**	7.40
Instructor:		Barbara Rose Jonathan Smith			
LAW	6070	**Property**	4.00	**A**	16.00
Instructor:		Christopher Serkin			
LAW	6080	**Regulatory State**	4.00	**A**	16.00
Instructor:		Kevin Stack			
LAW	7020	**Antitrust Law**	3.00	**A-**	11.10
Instructor:		Rebecca Allensworth			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	16.00	16.00	62.50	3.906
CUMULATIVE:	31.00	30.00	115.50	3.850

2022 Fall

Term Honor: Dean's List

LAW	5750	**Law Review**	0.00	**P**	0.00
Instructor:		Jennifer Shinall			
LAW	7000	**Administrative Law**	3.00	**A**	12.00
Instructor:		Kevin Stack			
LAW	7017	**American Legal History II**	3.00	**A**	12.00
Instructor:		Sara Mayeux			
LAW	7078	**Constitutional Law I**	4.00	**A-**	14.80
Instructor:		Matthew Shaw			
LAW	7534	**Networks, Platforms, Utilities**	4.00	**A-**	14.80
Instructor:		Ganesh Sitaraman Phillip Ricks			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	14.00	14.00	53.60	3.828
CUMULATIVE:	45.00	44.00	169.10	3.843

2023 Spring

Term Honor: Dean's List

LAW	5750	**Law Review**	1.00	**P**	0.00
Instructor:		Jennifer Shinall			
LAW	7180	**Evidence**	4.00	**A**	16.00
Instructor:		Garrick Pursley			
LAW	7561	**Policing in the 21st Century**	1.00	**P**	0.00
Instructor:		Arjun Sethi			
LAW	7600	**Professional Respons.**	3.00	**A-**	11.10
Instructor:		Mozianio Reliford			
LAW	8040	**Constitutional Law II**	3.00	**A-**	11.10
Instructor:		Sara Mayeux			
LAW	9070	**Economic Regulation of Finance**	3.00	**A+**	12.90
Instructor:		Phillip Ricks			

	EHRS	QHRS	QPTS	GPA
SEMESTER:	15.00	13.00	51.10	3.930
CUMULATIVE:	60.00	57.00	220.20	3.863

---------- NO ENTRIES BELOW THIS LINE ----------

Date: 06/06/2023

June 09, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write this letter to recommend Ariel Goldfine for a judicial clerkship for your upcoming term. Ariel is a confident self-starter and quick learner who demonstrated extraordinary legal acumen for someone just starting their law school career. She seamlessly integrated into our office with a selfless, “mission-first” attitude. Ariel has a bright future ahead of her and would undoubtedly be a strong addition for your team.

I had the pleasure of serving Ariel as her mentor during her 1L summer when she was a legal intern for the Federal Trade Commission’s Health Care Division. At the time, our office primarily worked remotely, only gathering in the office once a week on a volunteer basis. Accordingly, I anticipated that I would need to closely monitor Ariel’s work product and facilitate virtual introductions around the office. Instead, I am not sure she needed me at all! Ariel initiated contact with several members of the office searching for ways that she could help our office advance our work. Ariel organized complex data related pharmaceutical drug pricing and drafted legal memoranda about scarcely litigated antitrust laws, such as the Robinson-Patman Act. Her contributions were meaningful and impactful – validated by the fact that she received “repeat business” from each of the attorneys she supported. By the end of the summer, we had developed enough faith in her skills, that she was coordinating and leading interviews with third parties in support of an ongoing investigation.

The FTC values interns who demonstrate a passion for public service, support for the Commission’s mission enforcing the antitrust laws, and demonstrate superior legal acumen and skill. Ariel exceeded those expectations by every measure. During her summer period, her impact was more akin to an experienced attorney – not a 1L.

For these reasons, I highly recommend Ariel for your clerkship program. I am available at your request to answer any questions or to discuss any of the above.

Best regards,

Steven L. Miller
Attorney

Steven Miller - miller@rulegarza.com - 202-843-9230